

1 of the AARP who you stand up here purporting to
2 represent? What is their opinion on the photo ID
3 bill? How do you know and how do you get -- how does
4 your organization determine that you have the right to
5 stand up and speak for them, some of whom are on this
6 floor right now and I think have absolutely no idea
7 that the AARP has the position that you've espoused?

8 MR. KOHRMAN: Well, you know, Senator,
9 we have an even more quick turnaround accountability
10 system than even elected representatives who stand for
11 election every two or four or six years, which is that
12 our members can fire us at any time, and so --

13 SEN. OGDEN: Okay. So would it be
14 correct to say that there is nothing specific in your
15 organization rules that sets out a specific case that
16 this is the position of the AARP, and it's based on a
17 survey where the majority of the members or it's based
18 on the majority of members expressing their opinion to
19 you and you're just relaying what the majority told
20 you?

21 MR. KOHRMAN: We have a several hundred
22 page policy book.

23 SEN. OGDEN: Okay.

24 MR. KOHRMAN: And I quoted to you the
25 two fundamental propositions in that book about

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1 election restrictions, and they are that voting should
2 be fair, easy and accessible. And that in regard to
3 the -- I'm sorry. The second one is in regard to
4 issues of fraud that it's an important priority, but
5 never should be stressed to the exclusion of the
6 principle of expanding access to the ballot.

7 SEN. OGDEN: Okay. I understand that
8 general statement, but I'm going to say that the many
9 thousand people in my district who are members of the
10 AARP, I believe that they do not support this
11 position, and I believe that you do not have any
12 evidence to counter my statement.

13 MR. KOHRMAN: Well, we also have a
14 process that is a grassroots process.

15 SEN. OGDEN: Okay.

16 MR. KOHRMAN: Every year we go state by
17 state, we go policy by policy and we go soup to nuts
18 ground up, and all of our policies are subject to
19 review, analysis by all of our members.

20 SEN. OGDEN: All right.

21 MR. KOHRMAN: And, Senator, I have had
22 to answer innumerable criticisms, complaints and
23 questions from individual members over the seven years
24 I've been with the organization about sentences,
25 words, paragraphs in that policy book.

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1 SEN. OGDEN: Okay. Mr. Kohrman, I
2 understand and think I made my point, and I hope I've
3 given you a fair opportunity to respond.

4 MR. KOHRMAN: No, no, I --

5 SEN. OGDEN: Let me ask, how do you know
6 who your members are?

7 MR. KOHRMAN: Well, I'm not quite sure.
8 I see someone holding up a card up in the gallery, so
9 I guess that's one way.

10 SEN. OGDEN: How do you --

11 MR. KOHRMAN: I'm not sure I get your
12 drift. I'm not trying to be evasive.

13 SEN. OGDEN: How do you sign up for the
14 AARP? How do you even know who is eligible to be in
15 the AARP?

16 MR. KOHRMAN: Well, you know, that's an
17 interesting mystery that the membership people handle,
18 and I'm not trying to be cute. I don't know. I
19 assume we gather all kinds of information about
20 individuals through various mailing lists and send out
21 lots and lots of direct mail. But we know who our
22 members are because we spend a lot of effort keeping
23 track of them, and we know where they live and what
24 their interests are.

25 SEN. OGDEN: Is it possible that -- is

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1 it possible that you use forms of identification to
2 identify your members, and is it possible that you
3 send out membership cards that identify your members?

4 MR. KOHRMAN: Sure, sure.

5 SEN. OGDEN: And do you have a
6 reasonable level of confidence that these people are
7 who they say they are?

8 MR. KOHRMAN: Sure.

9 SEN. OGDEN: Okay. So --

10 MR. KOHRMAN: Can I just add there,
11 Senator? We have no reason to believe that people
12 would impersonate someone else in taking an AARP
13 membership, and I think that principle is the same one
14 applicable here.

15 SEN. OGDEN: I understand that, but what
16 I'm saying is you know who your members are because
17 you require some form of identification in order to
18 sign them up.

19 MR. KOHRMAN: No, we don't.

20 SEN. OGDEN: That identification is
21 either through some sort of list that you've obtained
22 identifying people who are over a certain age; that
23 identification is associated with a form they fill out
24 to sign; that identification is associated with a
25 membership card; that identification is associated

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1 with maybe some commercial transaction; I mean,
2 identification is involved throughout this process.
3 So my question is, can you think of a single member in
4 the AARP that could not meet the requirements in this
5 bill, a single one? And tell me who that is.

6 MR. KOHRMAN: Well, I would point --

7 SEN. OGDEN: Give us one person who
8 could not -- could not meet the requirements of this
9 bill if they are members of the AARP and have an
10 identification card that says "I'm a card-carrying
11 member of the AARP." Give me one person who couldn't
12 meet the requirements in this bill.

13 MR. KOHRMAN: Well, I tell you that I
14 think that's a good question, and I regret not
15 checking all the people mentioned in my testimony so
16 that I could answer that question.

17 SEN. OGDEN: Well, I'm going to suggest
18 to you that there's not a single member in the AARP
19 who could not meet the requirements in this bill.

20 MR. KOHRMAN: Well, Senator, that may be
21 right, but I doubt it, and I think you have no basis
22 for that statement.

23 SEN. OGDEN: Yes, I do.

24 MR. KOHRMAN: And if there is a basis
25 for that statement, it's that frankly our members are

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1 among the most energetic, active seniors there are in
2 the country. They are also more on average well off
3 than your typical senior. They're probably more
4 healthy than your typical senior, and they don't have
5 a lot of the challenges.

6 One of the things that AARP has done in
7 the last two years is to put on our priority list in
8 the AARP Foundation where all the legal advocates are
9 like me, a new focus on low-income seniors, and the
10 focus is on people who we're not likely to get as
11 members because for them maybe even \$12 a year is more
12 than they want to contribute.

13 SEN. OGDEN: Well, okay, and I
14 understand that we're talking about all the voters,
15 but as a representative of the AARP, I assume you're
16 speaking on behalf of your membership using a very
17 vague standard of what it is that they support and not
18 support, and that there is no evidence in your
19 testimony or in my questions to suggest that there's a
20 single member in the AARP who couldn't meet the
21 requirements of this bill. And so I don't have
22 anything else to add.

23 MR. KOHRMAN: Well, I'm not sure what
24 the point is, Senator. It seems to me --

25 SEN. OGDEN: The point is that this

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1 testimony is -- well, I don't have any more to add.

2 MR. KOHRMAN: Well, let me just respond.

3 It seems to me when you come to fundamental rights,
4 the burden is on the proponents of this bill to
5 justify it. If we were talking about regulating
6 advertising or some other interest that is not
7 fundamental to what it is to be an American, I would
8 take on the burden and acknowledge that it's, you
9 know, my burden to perhaps justify in excruciating
10 detail the names and addresses of people who couldn't
11 be covered by your bill. But it seems to me the shoe
12 is on the other foot when it comes to voting.

13 And to say that when there is no
14 evidence of harm, but it is speculative harm that
15 frankly -- another thing that concerns us, Senator, is
16 that proponents of these bills are creating their own
17 problem to be solved by complaining and suggesting to
18 our members and other seniors and voters all over the
19 country that there is a fraud problem that cannot be
20 demonstrated, that then needs to be solved by forcing
21 voters to jump through additional hoops. That seems
22 to us is an unnecessary --

23 SEN. OGDEN: Okay.

24 MR. KOHRMAN: -- an unnecessary and
25 unfortunate misallocation of time.

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1 SEN. OGDEN: All right. Mr. Kohrman,
2 and I would suggest to you that the hoops that you've
3 got to jump through to become a member of the AARP are
4 more onerous than the hoops you've got to jump through
5 in order to vote under this bill. And I would also
6 suggest to you that you're perfectly within your
7 rights to testify as an individual, but I think your
8 testimony representing the AARP lacks merit and
9 substance.

10 MR. KOHRMAN: Well, we're very
11 comfortable with our position on this bill, and we
12 feel very confident that our members believe in an
13 expansion of political participation rather than
14 measures likely to discourage it and reduce it.

15 SEN. DUNCAN: Thank you, Sen. Ogden.
16 Senator Patrick?

17 SEN. PATRICK: Thank you, Mr. Chairman.
18 I've heard a number of witnesses continue to say
19 something that I believe our last witness shows it is
20 not correct. You said there's no evidence of
21 fraudulent voting, and our last witness from Harris
22 County clearly showed there was fraudulent voting
23 there. So would you like to correct that statement?

24 MR. KOHRMAN: On the contrary, he showed
25 no evidence whatsoever of fraudulent voting. What he

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1 showed was evidence of fraudulent registrations, and
2 those are two very different things.

3 Moreover, what's so stunning about this
4 whole debate is that there are innumerable forms of
5 electoral malfeasants, but this kind of law gets at
6 none of those. The only thing it does, as Ms. Wang
7 said at the very beginning of this long debate, the
8 only thing that this bill can prevent is in-person
9 impersonation, and the notion that people --

10 SEN. PATRICK: Let me -- excuse me. I
11 didn't ask that question. The question was our last
12 witness clearly indicated, proved that people voted on
13 behalf of dead people. So don't sit there and say
14 there's been no evidence.

15 Secondly, in terms of AARP, did I
16 clearly hear you say to Sen. Ogden that AARP members
17 are more affluent, more well informed, very active,
18 and basically what I heard you say was AARP members
19 wouldn't be impacted by this bill. Is that correct?

20 MR. KOHRMAN: Well, let me answer --

21 SEN. PATRICK: That's a yes or no. Is
22 that correct?

23 MR. KOHRMAN: Well, you asked me two
24 questions.

25 SEN. PATRICK: I'm asking you one

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1 question now. Based on your testimony previously --

2 MR. KOHRMAN: Uh-huh.

3 SEN. PATRICK: -- you said that your
4 concern was for those members that may not -- or those
5 people who may not be -- can't afford \$12 a month to
6 be in AARP, that AARP members wouldn't be impacted.
7 So is your testimony that AARP members won't be
8 impacted? That's what you said a moment ago.

9 MR. KOHRMAN: They will be impacted
10 in -- to a lesser degree on average than seniors
11 generally and certainly --

12 SEN. PATRICK: How much is lesser,
13 5 percent?

14 MR. KOHRMAN: -- low-income seniors.

15 SEN. PATRICK: 5 percent? What's
16 lesser, 99, 1 percent?

17 MR. KOHRMAN: There's no disputing that
18 this is a small percentage of the overall electorate,
19 and the question is whether the proponents of this
20 bill care about the absolute number of people.

21 SEN. PATRICK: And do you have any proof
22 of even a lesser percent? Can you present any
23 evidence, solid evidence, that any member of AARP will
24 be impacted by this bill? Do you have any evidence?

25 MR. KOHRMAN: Our surveys shows that

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1 small percentages consistent with all the surveys --

2 SEN. PATRICK: Is there a name?

3 MR. KOHRMAN: -- have concerns that they
4 would not be able to provide --

5 SEN. PATRICK: Is there a name?

6 MR. KOHRMAN: -- the kind of ID that is
7 required in these laws.

8 SEN. PATRICK: So you don't have any
9 names. You just have this kind of general small
10 percentage.

11 So let me ask you this question: Have
12 you done a survey of Senate District 7 in Harris
13 County?

14 MR. KOHRMAN: Can I answer? Because my
15 answer was just given to me when it was not the answer
16 I would have given.

17 SEN. PATRICK: Let me -- let me ask
18 another question. Did you survey any one in Senate
19 District 7 in Harris County who is a member of AARP?

20 MR. KOHRMAN: Not as far as I know.

21 SEN. PATRICK: Okay. Would it shock you
22 if I told you that the majority of seniors in Senate
23 District 7 support voter ID?

24 MR. KOHRMAN: I would challenge you to
25 demonstrate that you've surveyed them and know who

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1 those members are.

2 SEN. PATRICK: Oh, I can -- oh, I can
3 assure you I meet with hundreds, thousands, I talk
4 with them, I know my district, I'm very well connected
5 to the people in my district. And the seniors of my
6 district, many who are members of AARP, support this
7 bill. Thank you.

8 MR. KOHRMAN: Okay. All I can --

9 SEN. PATRICK: I have no further
10 questions. Thank you.

11 SEN. DUNCAN: Sen. Williams, you're
12 recognized.

13 SEN. WILLIAMS: Thank you, Mr. Chairman.
14 You know, I've just -- during this discussion I've
15 just been on your Website here, and I've gone to the
16 policy and research, and I went to election issues and
17 scanned every article that you have on your Website
18 here under that category, and there is not a single
19 article in here about photo ID voting. And so I put
20 that under the search, policy and research, and I came
21 up with one article that says "the Supreme Court
22 upholds the voter -- voting ID laws. The U.S. Supreme
23 Court upheld an Indiana law despite acknowledging it
24 burdens poor people." I mean, you've got one article
25 on here that you have to really go to a lot of

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1 trouble.

2 I think it's so disingenuous for you to
3 come here and say that you represent all the members
4 of AARP when I have done surveys in my district -- you
5 know, I've got 750,000 constituents just like every
6 other member of the Senate does here -- and I find
7 consistently across all age brackets and across all
8 ethnic lines, they all support this measure. I
9 just -- I don't see how you can sit here and assert
10 this and offer no statistical proof or anything in
11 writing that you've ever surveyed any of our
12 districts. This is ridiculous. You are a political
13 hack coming in here and asserting this stuff that you
14 don't have any basis for whatsoever.

15 MR. KOHRMAN: Senator, I'd be happy to
16 help you with your Internet search skills any time and
17 provide you with a lengthy list of the Web links to
18 the various articles on the various cases, but --

19 SEN. WILLIAMS: You know, I've just
20 searched your Website.

21 MR. KOHRMAN: I understand, Senator, and
22 obviously you have some limitations in your search
23 skills because we have -- I've told you the number of
24 cases on this issue that we have, and you haven't
25 found them.

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1 SEN. DUNCAN: Sir, I'm sorry, I think
2 the question --

3 MR. KOHRMAN: Okay.

4 SEN. DUNCAN: -- there is no other
5 members queued up, so you are excused. Thank you for
6 your testimony.

7 MR. KOHRMAN: Thank you.

8 TESTIMONY BY COBY SHORTER

9 SEN. DUNCAN: The Chair calls Coby
10 Shorter. Mr. Shorter, I think, has been listed as a
11 resource witness.

12 MR. KOHRMAN: Actually, Mr. Chairman --
13 Mr. Chairman?

14 SEN. DUNCAN: Sir, you're not recognized
15 at this point, at this time.

16 MR. KOHRMAN: I've been -- I've been
17 criticized without a chance to respond by three
18 Senators.

19 SEN. DUNCAN: You're out of order;
20 you're out of order. You'll have to leave.

21 MR. KOHRMAN: Okay.

22 SEN. DUNCAN: Thank you.

23 MR. KOHRMAN: I was just going to
24 request a chance to respond in writing.

25 SEN. DUNCAN: Mr. Shorter, you'll need

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1 to state your name and the office that you're with,
2 and you'll have ten minutes as the other witnesses,
3 and then you'll be subject to questions at that time.
4 Go ahead. Do you have any written materials?

5 MR. SHORTER: No, sir.

6 SEN. DUNCAN: Okay.

7 MR. SHORTER: Thank you, Mr. Chairman
8 and Senators. I am Coby Shorter, the Deputy Secretary
9 of State for the State of Texas, and it's a pleasure
10 to be here with you this morning.

11 First of all, I just want to say on
12 behalf of Secretary Andrade, she sends her regrets for
13 not being here, and I have been invited here to be a
14 resource to you on some of the issues that you are
15 debating, and hopefully the information that I am able
16 to provide through answering your questions will help
17 you in your deliberations.

18 I only say this: It is our goal as the
19 Secretary of State's Office, the chief elections
20 office, to make sure that every election in Texas is
21 fair, every election in Texas is credible and
22 accessible to all the Texas voters. And our office
23 recognizes the importance of protecting the integrity
24 of elections and ensuring that all eligible Texans
25 have the opportunity to participate in the Democratic

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1 process.

2 So with that said, please know that
3 whatever deliberations and whatever bills you pass
4 related to elections, we look forward to working with
5 you and helping you to -- helping you in terms of
6 implementing the bills that you pass.

7 With that, I would ask that since I am a
8 resource, that I'm here to answer questions. We also
9 have, Mr. Chairman, our General Counsel John Sepehri
10 here to answer questions as well, but we are open now
11 to any questions we may -- you may have for us today,
12 this morning.

13 **QUESTIONS FROM SENATE FLOOR**

14 SEN. DUNCAN: The Chair recognizes
15 Sen. Fraser.

16 SEN. FRASER: Deputy Secretary Shorter,
17 thank you for being here. We -- it doesn't escape us
18 that you've been sitting over here since ten o'clock
19 this morning being available to this body. And as
20 someone that serves the state, we appreciate you being
21 here.

22 The questions that I have today for you
23 are -- I think I want some clarification, making sure
24 that the bill that I'm laying out that I am
25 understanding correctly the interpretation of someone

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1 that fills out an application, sends it in, receives a
2 registration card and then takes that registration
3 card and attempts to vote with that.

4 MR. SHORTER: Yes, sir.

5 SEN. FRASER: And I guess the first
6 question I would have is the election code is under
7 Chapter 63 and, in fact, the start of that is
8 Section 63.001, the Regular Procedure for Accepting a
9 Voter. Do you happen to have that --

10 MR. SHORTER: Yes, sir, I do.

11 SEN. FRASER: -- that law in front of
12 you? And I would ask you -- if possible I'd like to
13 walk through and make sure I understand the Texas law
14 and what provides for the ability for someone to vote.

15 Here in my hand I have the voter
16 registration card that I believe that is issued. Is
17 that correct? It is issued to a voter. It looks like
18 it is mailed out, and this would be the card that I
19 would use when I would walk into the --

20 MR. SHORTER: Senator, that does appear
21 to be our voter registration card.

22 SEN. FRASER: And it looks like -- it
23 says "Except as otherwise provided, acceptance of
24 voters shall be conducted as provided" under this
25 section. "(b) On offering to vote, a voter must

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1 present the voter's voter registration certificate to
2 an election officer at the polling place." So it
3 appears to me that if I walk in a polling place and I
4 take this voting card and I show it to the person at
5 the polling place, the first thing they're going to do
6 is accept this card that I'm offering.

7 MR. SHORTER: That is correct, sir.

8 SEN. FRASER: Okay. "(c) On
9 presentation of a registration certificate, an
10 election officer shall determine whether the voter's
11 name is on the registration certificate is on the list
12 of registered voters for the precinct." So I'm
13 assuming that after I hand him the card, if I remember
14 correctly, they've got a list in front them, they look
15 and find my name on the list, they look at my address
16 and they determine am I voting in the right precinct.
17 I think -- is that what they're looking for?

18 MR. SHORTER: Yes, sir.

19 SEN. FRASER: Okay. "(d) If the voter's
20 name on the precinct list of registered voters, the
21 voter shall be accepted for voting."

22 MR. SHORTER: That is correct.

23 SEN. FRASER: Now, is that what happens?

24 MR. SHORTER: Yes, sir, that is the --
25 what it's going to say on that.

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1 SEN. FRASER: Okay. I want to clarify.
2 On this card, there's several other things on the
3 card. One of them is, it has date of birth. Now, is
4 the person that I'm giving this to looking at that
5 date of birth, and has it been reflected in state law
6 that that's something they check?

7 MR. SHORTER: According to state law
8 right now, as it is written now, date of birth is not
9 something that is checked.

10 SEN. FRASER: On this card, it has an
11 area for my sex. We've had a lot of fun today with
12 the sex change argument, but on the card it says that
13 there is a registration for someone's sex. My card
14 says "male," and I put it there. Is that something
15 when I hand this card to the registration person that
16 they would be verifying on the card?

17 MR. SHORTER: They would not be
18 verifying it under current law.

19 SEN. FRASER: Okay. So let me -- let me
20 make sure I understand the way this works. I have a
21 card in my possession. I walk in and I give this to
22 the person. They look at the list, they determine I'm
23 in the right precinct. If I'm on the list and I'm in
24 the right precinct, they hand me my card back, and
25 they hand me a ballot, and I go over and vote. Is

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1 that correct?

2 MR. SHORTER: Yes, sir.

3 SEN. FRASER: Okay. Well, I'm a little
4 confused about how -- what could happen because let me
5 continue this questioning here. I live in Horseshoe
6 Bay, Texas. It is a small community, a retirement
7 community, which by the way, most of them are AARP
8 members. And the retirement people there that still
9 are going to vote, when they walk in, the people in
10 the polling place, they know me as their Senator. And
11 if I walked in and I brought my voting card and I put
12 it in, they'd say "Senator, it's good to have you
13 today," and I would register and I would vote and then
14 I would walk back out to my car.

15 But what would happen after I voted
16 that -- in my car I had my brother Steve's voter
17 registration card, and I walked back into that polling
18 place that I just left and I laid Steve Fraser's
19 voting card down and said "I'm here to vote." Now,
20 the registrar probably would say "Well, Senator, you
21 were just here, and you just voted." And I said "No,
22 I'm Steve Fraser. I'm his twin brother. I'd like to
23 vote." What authorization under state law does that
24 polling place person have to tell me that I am not
25 authorized to vote?

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1 MR. SHORTER: Under current state law,
2 there is no authorization to prevent that polling
3 person from --

4 SEN. FRASER: So if I present my
5 brother's card and even though they know or they
6 suspect -- greatly suspect that I am not Steve Fraser,
7 do they have the authorization under state law to stop
8 me from voting?

9 MR. SHORTER: I don't think -- based on
10 my understanding of state law and based on my
11 consultation with our staff, they don't have the
12 authorization to stop you.

13 SEN. FRASER: Okay. Let me -- let me
14 carry it a step further. Let's say that I'm not in
15 Horseshoe Bay. I'm in Houston, Texas. And in
16 Houston, Texas if I was voting, probably they wouldn't
17 have any idea who I was. And I walked in the voting
18 booth and I didn't have my card or my brother's card,
19 I had my wife Linda's card, and I went in to vote.
20 And my name -- Linda Fraser's name was on the list in
21 the precinct. They would check and see if her name
22 was there, and they would check the address, and I'm
23 in the right place, would they hand me a ballot and
24 allow me to vote? Is there anything under state law
25 that they would check the person verifying the -- you

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1 know, that I'm not Linda Fraser in that? Is there
2 anything under state law that would cause them or
3 allow them not to allow me to vote?

4 MR. SHORTER: Senator, under these
5 provisions of the law as they are, there are no
6 provisions that would prevent that.

7 SEN. FRASER: Okay. Let's carry it a
8 step further. There was a case that was represented
9 to me this week -- there have been a lot of these now
10 that we've been working on this -- this happened in
11 Plano. A poll worker in Plano had a lady came in,
12 bright red hair, big blue hat, feathers on the hat,
13 one of those people you would remember when they came
14 in. She voted. An hour later she came back in with
15 somebody else's registration card, went down to the
16 next poll person and was registering to vote.

17 The person she just voted with went to
18 the election judge and said "This person was just
19 here. They just voted. She's trying to vote again,"
20 and the election judge told them "I'm sorry. We have
21 nothing under state law to stop them. You have to
22 allow them to vote." Now, is that -- under current
23 law could that have happened?

24 MR. SHORTER: Under current law as it is
25 written, that could have happened, yes, sir.

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1 SEN. FRASER: Okay. Let's carry it a
2 step further. Let's assume there's an unscrupulous
3 person that has the address of someone that they know
4 was a registered voter and that person has passed
5 away. Let me back up and ask the question.

6 My understanding is that when someone
7 dies that your office requests death records, and that
8 you now have the ability to try to take people off the
9 roll. Is that correct?

10 MR. SHORTER: Well, Senator, what
11 happens on a weekly basis, the Bureau of Vital
12 Statistics submits to our office their records on
13 deceased individuals, and we forward that information
14 to the counties for that person to be taken off the
15 roll.

16 SEN. FRASER: How long does it take for
17 that data to -- to have the person deceased till you
18 get it and you get them taken off, what is the time
19 lag?

20 MR. SHORTER: Senator, I don't know the
21 exact timeline that it takes, but the challenge that
22 we sometimes have is that the information that is
23 forwarded to our office from vital statistics, there's
24 a lag between the time that we get it and the time the
25 individual sometimes actually has expired.

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1 SEN. FRASER: I've been told it's six
2 months. Is that the average time that it takes to
3 remove them off the roll?

4 MR. SHORTER: We do have instances of
5 knowing it has taken six months.

6 SEN. FRASER: Okay. If it took six
7 months and if someone died and if someone sent in a
8 letter of a change of address and said that person
9 just died, asked for a new registration card to be
10 sent to X address and they did that with every one
11 that died during that period, and there were as many
12 as 30 or 40 or 50 of these people and the same
13 address -- request change that went to the same
14 address, do you have the ability or does the County
15 Clerk have the ability to catch that under our current
16 system?

17 MR. SHORTER: If they all went to the
18 same address?

19 SEN. FRASER: If someone sent in a
20 change of address --

21 MR. SHORTER: Yes, sir.

22 SEN. FRASER: -- of a valid voter and
23 said "Send me their registration card and send it to
24 this address" --

25 MR. SHORTER: Yes, sir.

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1 SEN. FRASER: -- and whether it was one
2 or two or ten or thirty or fifty, that they change
3 that address, if someone sends you in a change of
4 address, would you likely send it to that address?

5 MR. SHORTER: Yes, sir, we would.

6 SEN. FRASER: So it's possible that
7 someone could collect, could harvest multiple cards at
8 this address. Hypothetically is it possible they
9 could hand them out to random people that didn't
10 belong to the card, and that person -- the random
11 person could walk in with the fake card and give it to
12 the person at the polling place and vote that card?

13 MR. SHORTER: Hypothetically, yes,
14 Senator.

15 SEN. FRASER: Well, hypothetically if it
16 could happen and someone could do it, we have to
17 assume that somebody has thought about that, and that
18 some of these people that we've heard on these stories
19 of people that were dead that voted multiple times
20 possibly that could have been what happened. Is that
21 correct?

22 MR. SHORTER: Yes, sir.

23 SEN. FRASER: Okay. If Senate Bill 362
24 was in place and that person that stole that
25 identification or stole the card or the Troy Fraser

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1 that was voting Steve Fraser's card, if they had to
2 come in and show either a photo ID proving who they
3 were or they had other means of identification that
4 they would have to show, would that not give us a lot
5 better chance of identifying that that person is
6 fraudulently voting?

7 MR. SHORTER: Yes, sir, if you could
8 verify that.

9 SEN. FRASER: Okay. Well, let's change
10 this for a second. I have the -- your voter
11 registration card here in front of me. I know it
12 looks like it's got a lot of spaces for things to fill
13 out, but down at the bottom it's got a place to fill
14 in your driver's license number, and there's another
15 place that says your social security card number.

16 MR. SHORTER: Yes, sir.

17 SEN. FRASER: The data that I received
18 from you it looked like that because of motor voter
19 we're receiving about -- I think the number is
20 somewhere in the high 80s. You know, 75 to 80 percent
21 of people right now are using their driver's license
22 number. There is a smaller number, you know, 10,
23 15 percent uses a social security number, but there
24 were a number of people -- I think there were 3,700
25 people in Texas last year -- 37,000 people in Texas

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1 last year that used neither. They said "I don't have
2 a driver's license. I don't have a social security
3 card," and they turned this in.

4 Now, if they turn this in to the
5 Secretary of State or to the registrar in Houston, the
6 guy that was just up, once they do that, would this be
7 processed, and will they be issued -- even though they
8 have no forms of identification, they don't give you a
9 driver's license number or a social security card, all
10 they gave you was just a blank card, will they be
11 issued a voter registration card?

12 MR. SHORTER: Senator, they will be
13 issued a voter registration card if they sign the
14 affirmation statement at the bottom.

15 SEN. FRASER: If they sign the bottom
16 saying "I'm who I say I am" on the bottom, they send
17 this in, they're going to get a registration card?

18 MR. SHORTER: That is correct.

19 SEN. FRASER: Okay. But I also
20 understand that when they go to vote there's going to
21 be a flag on that, and when they come in they've got
22 to show something to prove that they are who just
23 signed up. Is that correct?

24 MR. SHORTER: Yes, sir, they will have
25 to --

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1 SEN. FRASER: Okay. But you also -- if
2 I understood the person from Houston, is that when
3 they fill this out, they mail them a notice that
4 they're going to have to provide some kind of
5 identification. And if they took that letter that
6 they just mailed them in and said "Here is my proof of
7 identification. They just mailed this to me,"
8 basically they could game the system by showing no
9 identification, mail it to the address, take that as
10 their form of identification, and they could use --
11 and let me give you kind of a ridiculous case. But if
12 I filled this out as Mickey Mouse and it was 103
13 Lighthouse Drive and I sent it in, would you send me a
14 card for Mickey Mouse?

15 MR. SHORTER: You would get a card,
16 Senator, if you have a -- have signed the affirmation.

17 SEN. FRASER: If I sign the bottom of
18 it, you're going to send me a card for Mickey Mouse.
19 Okay. Now I've got a registration card that says
20 Mickey Mouse. I'm going to walk in to my precinct
21 with that card, and you've also sent me a notice
22 saying I've got to show other identification. I take
23 the letter you just mailed me, walk in to my polling
24 place, I lay down my Mickey Mouse card, I also lay
25 down the letter you just mailed me, if I give them

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1 that, are they going to allow me to vote?

2 MR. SHORTER: If you're using that
3 letter -- if we're talking about the letter from the
4 government agency, it will be counted as a form of
5 identification.

6 SEN. FRASER: Okay. So if someone is
7 unscrupulous and they know how to do this, let's say
8 some random group like ACORN that decided they wanted
9 to try to use something to register people to try to
10 get a card and to game the system and then to go in
11 and vote and falsify that vote by not giving the
12 proper identification, the scenario that I just laid
13 out, is that possible under current law?

14 MR. SHORTER: It is possible, Senator.

15 SEN. FRASER: Okay. In the this last
16 election cycle -- and I'm sorry. I'm not going to ask
17 you that question there. We should have asked the
18 registrar because of the people that voted late in
19 this last election cycle I have been told that they
20 suspected thousands and thousands of that scenario
21 that I just suggested.

22 But if I took that Mickey Mouse voter ID
23 and I laid it in front of the person, would the person
24 say "Thank you, Mr. Mouse. Here is your card," and
25 they would allow me to vote? Is that not correct?

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1 MR. SHORTER: Theoretically, Senator,
2 that -- that could happen.

3 SEN. FRASER: Okay. So I guess what I'm
4 trying to establish with you is that it sounds like
5 today if I want to game the system and I want to
6 cheat, it's very difficult for either the Secretary of
7 the State or that election clerk or that election
8 judge to identify that I'm cheating and know for sure.
9 Is that correct? Especially if I'm voting in Houston
10 or Dallas or someplace where they have no reason to
11 know who I am, is it difficult -- would you say that
12 it is difficult for them to identify, to determine for
13 sure, that that person representing themself as Mickey
14 Mouse really is Mickey Mouse?

15 MR. SHORTER: Senator, I would say that
16 there may be -- they may have an opportunity to
17 identify it. However, to do something about it based
18 on what is currently in statute would be difficult.

19 SEN. FRASER: Okay. Well, actually that
20 was the next question. It's difficult to identify,
21 but it sounds like it's even more difficult to proceed
22 to prosecute because if you can't identify it, you
23 don't have the authority to ask them questions to
24 prove who they are. And even if you think you know
25 that it's the wrong person, if you accuse them of

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1 doing that, there's really nothing under current law
2 to allow you to do that, is there?

3 MR. SHORTER: Well, they're a registrar
4 who has some concerns, has reasonable concerns, docs
5 have the capacity to challenge, but there's not
6 provisions for once those challenges are made for you
7 to do much with it.

8 SEN. FRASER: Okay. Under current law,
9 as we say here, even if there's a challenge -- and
10 let's say that -- let's go back to the Horseshoe
11 Bay -- let's go to the Horseshoe Bay example.

12 MR. SHORTER: Yes, sir.

13 SEN. FRASER: If I voted twice there,
14 they'd know it was me and probably they would say it's
15 a challenge, and they probably could call the D.A. and
16 say "The Senator just voted twice. We need to check
17 into it." But the question is, I just voted twice, I
18 just placed two ballots, what would happen to those
19 ballots? Would they be put in the pile to be counted?

20 MR. SHORTER: Yes.

21 SEN. FRASER: Okay. So I just voted
22 illegally. You knew I voted illegally. You're going
23 to report me to the D.A., but I just voted. And if
24 that is a close election, that County Commissioner
25 that I voted for, and they're going to be within one

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1 or two votes, I just impacted an election by voting
2 illegally.

3 MR. SHORTER: Would you allow me to
4 defer to my general counsel on whether or not that
5 actual vote would count twice?

6 SEN. FRASER: I'm sorry. I didn't say
7 it was going to count twice. I voted twice. I'm
8 saying I voted as Troy Fraser and I voted as Steve
9 Fraser, and both of those votes I voted under current
10 law. The vote, my understanding is, and I've asked
11 the registrar of these counties what they would do, if
12 someone comes and votes and they place a vote, they
13 have to put it in the pile to count. But even if
14 there's appeal, they could pursue it and possibly get
15 an indictment. But I think what you're saying is if
16 it's hard to catch them, it's even much harder to
17 prosecute.

18 MR. SHORTER: And, Senator, on that --
19 on that particular question, I think my best response
20 to you is for you to allow me the opportunity to
21 research that one and get back with you as soon as
22 possible --

23 SEN. FRASER: Okay. Okay. That's good.

24 MR. SHORTER: -- because I'm really not
25 clear on that one.

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1 SEN. FRASER: The other question I would
2 ask you and that I want to clarify, if someone
3 suspects the scenario that we just talked about where
4 they suspect somebody has voted illegally, it got put
5 in the pile to count and they think that they voted
6 twice like the lady with the big hat, if that is
7 referred to someone to check it out, if it happens in
8 Dallas, probably that's going to go to the District
9 Attorney, or they could send it to -- directly to the
10 Attorney General, or it's possible it could be sent to
11 you, but if they send it to you, aren't you going to
12 refer it to the District Attorney and the AG? Is that
13 correct?

14 MR. SHORTER: If a complaint is sent to
15 the Secretary of State's Office, our office looks at
16 the complaint, and there's a general assumption among
17 the staff and the Secretary of State's Office and that
18 assumption is if the information that is being
19 presented on that -- on that complaint is actually
20 considered true, and if it's true we -- of course
21 understand, Senator, our office does not do the
22 investigation. But if the allegations as presented
23 would present a crime under the elections code, our
24 office would refer it to the Attorney General's
25 Office.

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1 SEN. FRASER: Okay. And I guess the
2 follow-up question to that is if it's hard to identify
3 and it's hard to prosecute and there's two other
4 sources, the assumption is that the number of these
5 going to your office probably -- is it great? If
6 they're having trouble identifying it and they're
7 having trouble prosecuting it, do you --

8 MR. SHORTER: Correct. Senator, the
9 number -- in terms of -- I can give you some
10 statistics. In terms of the Secretary of State's
11 Office since September 1, 2007, there were 50 written
12 complaints sent to our office, and those -- those
13 were -- our office looked through those. We looked at
14 them to see if there was merit. Actually related
15 to -- complaints related to voter impersonation, we
16 found about seven of those complaints. Two of them
17 were actually referred, one was not referred, and one
18 is pending. One is pending with our office now to be
19 actually referred to the AG's Office.

20 SEN. FRASER: Thank you, Mr. Shorter. I
21 do appreciate the information.

22 SEN. DUNCAN: Sen. Van de Putte or --
23 Sen. Van de Putte? And the court reporter has been
24 going for about almost two hours. If we could -- you
25 take as long as you need, but I would propose that we

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1 let her take a break in about ten minutes, if we
2 could.

3 SEN. VAN de PUTTE: Thank you,
4 Mr. Chairman, and thank you very much for being here
5 particularly in the late -- excuse me -- the early
6 hour that we're in now in the next day.

7 I wanted to ask a few of the questions
8 earlier yesterday. In speaking to Sen. Fraser when he
9 laid out the bill, I asked several questions at that
10 time. He said that the Secretary of State's Office
11 would be the most appropriate. So the questions that
12 I'm asking you are actually the ones that Sen. Fraser
13 had asked me to ask.

14 You. And please give our regards to my
15 dear friend and fellow San Antonian Hope Andrade.

16 I wanted to ask you if you would just
17 take a look at the bill, and hopefully you have a copy
18 of that or your general counsel has that for you. On
19 the first page in Section 15.005 --

20 MR. SHORTER: Uh-huh.

21 SEN. VAN de PUTTE: -- there's a
22 timeline between the requirements when each voter
23 registration certificate issued under Section 13.142
24 or renewal registration certificate issued under
25 Section 14.001. In the Senate Bill that is proposed,

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1 we have to do a lot of changes to educate our election
2 judges and our clerks. What happens in the timeframe
3 between the people with current registrations that are
4 caught between the renewal for purposes of education?

5 MR. SHORTER: For purposes of
6 education of --

7 SEN. VAN de PUTTE: Yeah.

8 MR. SHORTER: -- of the new bill?

9 SEN. VAN de PUTTE: Yeah.

10 MR. SHORTER: Well, Senator, what we
11 would do -- what our office is planning on doing for
12 all elections-related bills, we're in the process
13 right now of doing the long-term planning for voter
14 education for our office. And voter education in our
15 office deals with some specific things. Voter
16 education in our office deals with we want -- we want
17 to talk about where to vote, how to vote, what do you
18 need to vote, what are the items that you need to
19 vote, all the resources. So we're planning that now.

20 If this bill were passed or any other
21 bill that you would pass related to changes in a
22 requirement for voting, as we continue to develop our
23 module for voter education, we would be able to put
24 the requirements that this bill or any other bill has
25 into our planning module for voter education that

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1 we're currently developing.

2 SEN. VAN de PUTTE: Since the proposed
3 regulations and rules would be greatly changed from
4 the process that Texas voters have used in the past
5 several years with the requirements of the voter
6 certificate and a photo identification, how would the
7 Secretary of State's Office propose to inform voters
8 of these changes?

9 MR. SHORTER: Senator, we would inform
10 through the existing process that we have, which is a
11 pretty extensive process. For instance, during the
12 last year on voter education, it was a \$3 million
13 process that we undertook to inform voters of what's
14 going to be going on in the election cycle that ended
15 in November of 2008. We're doing that now.

16 It would mean that our office would have
17 to make sure that all of the changes are implemented,
18 and implementation would mean all notifications that
19 would need to be made, we would have to get that done.
20 All training for county Election Officials through our
21 current -- through our current system of educating
22 county workers, election workers, which we hold
23 periodically through the year, we would implement or
24 make sure that this new information is a part of that
25 process. Poll worker training, which we're looking at

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1 right now, we would also make sure that those things
2 within the bill that actively affect poll workers,
3 those changes will be put into what we're doing now or
4 what we're planning to do.

5 Generally after -- during a session when
6 a session is over, there are a lot of election bills
7 that are passed, and our pattern of preparing for
8 coming out of session, going into a season of getting
9 ready for elections, we start looking at what bills
10 have been passed. We're putting together the
11 structure now on what we're doing on voter education
12 and then fit those into the model. Sometimes when
13 there are major changes like this, it does require
14 more work on our -- a heavier workload on our staff,
15 but the staff at the agency has proven time after time
16 that they're capable of doing it.

17 SEN. VAN de PUTTE: Well, I believe that
18 the Secretary of State's Office and particularly this
19 Secretary of State, is more than willing and it's been
20 shown. My concern is that -- have you seen the fiscal
21 note that is attached to the implementation of this
22 bill?

23 MR. SHORTER: Yes, ma'am, I have.

24 SEN. VAN de PUTTE: According to the
25 fiscal note, your -- the Office of the Secretary of

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1 State.

2 MR. SHORTER: Uh-huh.

3 SEN. VAN de PUTTE: -- is to absorb the
4 cost. Given that, how do you plan to notify each of
5 the voters, given that in Indiana and Georgia
6 individual mailings were made to each registered voter
7 informing them of the change in voter ID? And since
8 we have no legal, I guess, basis, at least in our
9 fiscal note, for the Secretary of State to implement
10 that, how would the Secretary of State's Office plan
11 to inform each voter, which were the requirements that
12 they felt under -- to get pre-clearance under the
13 Voting Rights Act, how would you-all achieve that with
14 zero money?

15 MR. SHORTER: Senator, we would -- we
16 would achieve that by using the funds that we've been
17 using to do it in the past. We would use the HAVA
18 Funds that have been set aside for voter education. I
19 remember your asking this question earlier about the
20 zero fiscal note that our office put on it. We put it
21 on there, and when this bill -- when a similar bill
22 was filed like this in the previous session, staff
23 shared with me that there was a zero fiscal note on it
24 as well, and it was because HAVA dollars were able to
25 be used.

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1 SEN. VAN de PUTTE: I believe the fiscal
2 note for the voter ID bill in the 80th Legislative
3 Session that was passed by the House was at \$600,000,
4 and so we --

5 MR. SHORTER: Yes, ma'am.

6 SEN. VAN de PUTTE: So that's what I
7 wanted to ask is that -- I know that Hope is very good
8 at squeezing dollars, but how do you -- how does the
9 Secretary of State's Office plan to inform -- and it's
10 not just the training. From what we understand of all
11 voter ID laws that have been passed, each of those
12 Secretaries of State have done an individual mailing,
13 not just posting on the Web, not that. Do you plan to
14 send an individual mailing to each voter with or
15 without the passage of this bill?

16 MR. SHORTER: That -- first of all, that
17 would be, of course, Secretary Andrade's decision.

18 As for that \$600,000 fiscal note in the
19 previous bill, that was not a fiscal note that was
20 put on by the Secretary of State's Office. My
21 understanding is that was a fiscal note that was put
22 on by DPS. Even though that fiscal note was \$600,000
23 put on by DPS, our fiscal note on that previous bill,
24 if I'm understanding correctly, is that it was still
25 zero because we were not looking at those funds to --

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1 SEN. VAN de PUTTE: Okay.

2 MR. SHORTER: -- and we do still now.

3 For instance, right now in voter education, in HAVA
4 dollars, we still have \$2 million left. Our staff, in
5 anticipation of bills coming out of the session, we've
6 been working with the EAC already to see -- make sure
7 that bills that are passing through the House and
8 through the Senate or through the Legislature of Texas
9 would be able to -- we would be able to use HAVA
10 dollars for that. We feel comfortable that we can,
11 but we don't want to get towards the end of the
12 session and find out that we were incorrect.

13 SEN. VAN de PUTTE: Thank you. I would
14 also ask the questions that I asked Sen. Fraser that
15 they said that the Secretary's Office would be more
16 appropriate. With regard to naturalized citizens,
17 what is the difference between a certificate -- a
18 citizenship certificate, which is in the first section
19 of the bill that's allowable with the photo ID, and
20 citizenship papers, which is allowed under the second
21 part of the bill?

22 MR. SHORTER: Senator, I remember your
23 asking that question earlier today, and I asked our
24 staff today to help me and answer that question. They
25 have not gotten back to me, of course, at four o'clock

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1 this morning. But if you would allow me to get you
2 the answer to that in a few hours, I will provide that
3 for you.

4 SEN. VAN de PUTTE: Thank you. That
5 would be helpful to us since we have 56,000
6 naturalized citizens. And I believe the certificate
7 is the eight by eleven certificate that is issued at
8 the time of naturalization, which has a photo, but in
9 the case of many of our constituents who have been
10 naturalized it is a photo of them when they were a
11 young child or a young adult, and the citizenship
12 papers may be the little wallet size card. So it
13 doesn't have a photo.

14 MR. SHORTER: Yes, ma'am.

15 SEN. VAN de PUTTE: But I think because
16 of the language and since it's each of those
17 documents, it would be very helpful to us.

18 And I know that there are probably some
19 more questions from other members, but I know that our
20 Stenographer has been there, but when you come back, I
21 know that some of the questions, if I have the chance
22 to ask, or maybe one of the other members, is the
23 statistical and demographic data of our current Texas
24 voters and who are registered.

25 MR. SHORTER: Yes, ma'am.

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1 SEN. VAN de PUTTE: So I will stop at
2 this point the questions so that we can take a break,
3 but just to let you know that's probably coming up.

4 MR. SHORTER: Thank you.

5 SEN. VAN de PUTTE: Thank you,
6 Mr. Chairman. I'll proceed after.

7 SEN. DUNCAN: Do you want to maintain
8 the floor when you come back?

9 SEN. VAN de PUTTE: I would love to
10 maintain the floor after just to continue, but I don't
11 want to go beyond the 4:40 a.m.

12 SEN. DUNCAN: Okay. We will then --
13 Members, with that we will stand at ease for ten
14 minutes and be back at 4:50.

15 (Recess: 4:41 a.m. to 4:53 a.m.)

16 SEN. DUNCAN: Okay. Members, we'll come
17 back to order. Sen. Van de Putte has the floor.

18 Before she begins again, we'll have -- I
19 need to make this announcement to the folks who are in
20 the gallery or who are waiting to be in public
21 testimony. The Chair would request that anyone
22 wishing to testify return to the registration desk and
23 check in with the clerk. This will allow the clerk to
24 pull the relevant witness cards, and we can proceed
25 through public testimony more efficiently. All

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1 witness information will be entered into the record
2 and witnesses present and testifying will be noted as
3 such. Those who do not testify will be entered into
4 the record as nontestifying but registering their
5 position for or against the Senate Bill 362. We think
6 this will be a way to help facilitate those and also
7 give us a little better idea of how to manage yours
8 and our time.

9 Sen. Van de Putte, you're recognized.

10 SEN. VAN de PUTTE: Thank you,
11 Mr. Chairman.

12 Thank you. It's good to be back with
13 you again. Before I ask some of the demographic data,
14 there was one part that I forgot to ask that I had
15 asked Sen. Fraser and wanted to reiterate. Under the
16 proposed bill, we have two different types of military
17 ID as well: Those military IDs that have a photograph
18 and the military IDs that do not have a photograph,
19 and they are listed, I think, in two different
20 sections of the bill.

21 My question is having to deal with the
22 inconsistencies of addresses with our military
23 members, not veterans. Once they're veterans, they're
24 living in Texas and not here because of the duty
25 station. Under the provisions of this bill or maybe

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1 even currently, but currently our military members do
2 not have to show a photo identification. Under this
3 bill they would. How would a clerk or election judge
4 treat the inconsistencies in nonalignment of address
5 on the photo ID with the -- with the certificate?

6 MR. SHORTER: Senator, I don't have that
7 answer, but I will get it for you, and that would
8 involve -- and I'll tell you what I will go through:
9 Asking my staff and also visiting with the clerks to
10 see have they seen this, is this something that has
11 happened already, or based on this particular
12 bill would it happen.

13 SEN. VAN de PUTTE: Well, I don't think
14 we know because they don't have to show a photo ID.

15 MR. SHORTER: Correct; you're right;
16 you're right; absolutely.

17 SEN. VAN de PUTTE: And because many of
18 those members that are here still have their own
19 state's driver's license because -- or they're issued
20 the DOD license on some installations, it doesn't
21 reconcile with the voter certificate.

22 MR. SHORTER: Right.

23 SEN. VAN de PUTTE: And particularly for
24 those career military who then become civilian, they
25 keep their -- that because they may be going to

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1 retire, and it's particular. So if you would do that?

2 MR. SHORTER: Yes, ma'am.

3 SEN. VAN de PUTTE: And in that also how
4 would, under the proposed bill, we treat the
5 inconsistencies in addresses in college students who
6 may still keep their primary place of residence, which
7 is their home and the home of their parents, for
8 purposes of their driver's license because that's
9 their permanent address and they are only temporary,
10 yet choose to register in the town that they are now
11 going to college. So the photo identification or
12 driver's license does not match up with the
13 certificate. So those are two instances where how
14 would that -- those be treated.

15 MR. SHORTER: Yes, ma'am.

16 SEN. VAN de PUTTE: My other question
17 is -- we know from some of the data that the affected
18 groups and what we -- what is the state's burden to
19 prove at the Department of Justice is the availability
20 for African-Americans, Hispanics, language groups to
21 be afforded the same ability, in other words, no
22 discrimination? Can you tell us of the 13 million
23 plus voters, do we know how many voters are
24 African-American in the State of Texas?

25 MR. SHORTER: Senator, we don't know

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1 because that data is not tracked on race and ethnicity
2 right now. The only thing that is tracked is we
3 can -- based on our new TEAM system, we can
4 cross-reference Hispanic surnames, but that's
5 inconclusive, so --

6 SEN. VAN de PUTTE: Van de Putte.

7 MR. SHORTER: Exactly. So the answer is
8 right now there's not a mechanism to track race or
9 ethnicity.

10 SEN. VAN de PUTTE: So how would we be
11 able -- if we don't know -- if we're not capturing the
12 data, the data is not available as a base point of how
13 many registered voters we have who are
14 African-American or Latino or Spanish speaking, how
15 can we benchmark and prove up to the Justice
16 Department and support litigation that there will not
17 be a negative effect since we have no data?

18 MR. SHORTER: I would assume that our
19 staff has been using some other means to do that. I
20 don't know what that is, but I will find out for you.

21 SEN. VAN de PUTTE: Okay. So what I
22 have so far is that you will get back to us on
23 certificate versus papers --

24 MR. SHORTER: Yes, ma'am.

25 SEN. VAN de PUTTE: -- for naturalized

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1 citizens --

2 MR. SHORTER: Yes, ma'am.

3 SEN. VAN de PUTTE: -- since the other
4 states that have passed this so far do not have nearly
5 the degree of those naturalized citizens as we do; and
6 that you will also check on the incongruencies of
7 address for both our military members and college
8 students.

9 MR. SHORTER: Yes, ma'am.

10 SEN. VAN de PUTTE: And you will also
11 get back with us the data, if it exists, of how many
12 voters we have that are indeed African-American and
13 Hispanic so that we can have a benchmark. We need
14 that data to be able to prove that. So those are the
15 things that you are going to be helping us with.

16 MR. SHORTER: Yes, ma'am, I will; we
17 will. John and I will be notifying staff so they can
18 get on it and hopefully give you an answer before the
19 end of the day.

20 SEN. VAN de PUTTE: Well, thank you, but
21 I know you haven't gone to sleep yet, so I appreciate
22 the hard work of your staff. And again, my regards to
23 my dear friend, our Secretary of State.

24 MR. SHORTER: Thank you.

25 SEN. VAN de PUTTE: Thank you.

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1 SEN. WENTWORTH: The Chair recognizes
2 Sent. Whitmire. Sen. Whitmire? John? The Chair
3 recognizes Sen. Whitmire.

4 SEN. WHITMIRE: No, I'll pass
5 (inaudible) I've got a quick question, quick, quick,
6 quick. You were responding to Sen. Fraser's
7 hypotheticals, and he was talking about if he ran in
8 and voted and then he went back out and got his
9 brother's card and voted again that nothing could be
10 done. Is it not true, sir, that the election officer
11 is in total control of his precinct? I've seen folks
12 be arrested for handing out cards too close, poll
13 watchers for harassing voters. Isn't it true that if
14 you try to go in and vote twice in the same timeframe
15 that you could be arrested for voter fraud at that
16 moment and maybe even have a mental warrant served on
17 you if you tried to do it like he described it? So
18 aren't we -- aren't we really being a little
19 ridiculous at five in the morning with some of our
20 hypotheticals?

21 MR. SHORTER: Sir, I'm not --

22 SEN. WHITMIRE: You were being awful
23 nice. I realize you're in a difficult position, but I
24 don't -- is it realistic that someone, the same person
25 could vote twice within a 30-minute timeframe?

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1 MR. SHORTER: It's possible, sir.

2 Whether --

3 SEN. WHITMIRE: It's possible to get
4 arrested for doing it, too, is it not?

5 MR. SHORTER: That is correct.

6 SEN. WHITMIRE: Okay. That's all I
7 wanted to clear up because -- and I could go through
8 his other hypotheticals.

9 What really concerns us and I guess it's
10 been somewhat addressed is the cost and the commitment
11 to educate the public.

12 MR. SHORTER: Yes, sir.

13 SEN. WHITMIRE: Have you been in any
14 planning sessions where you're going to have the
15 resources and you have the spots, as Sen. Williams
16 pointed out? I mean, are we really serious and ready
17 to go with that, or is that a hypothetical, too?

18 MR. SHORTER: No, sir. Our office is
19 actively planning our voter education program for the
20 next cycle now.

21 SEN. WHITMIRE: Well, that's great, but
22 what's the provisions for doing a voter ID plan?

23 MR. SHORTER: What we're doing now is
24 looking at -- because this is one of our new bills
25 that we're working on and that has been brought to us

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1 for us to look at, we're looking at what costs would
2 be associated with doing those things within the bill
3 and fitting those into the funds that we have
4 available. Based on the fact that it is not a
5 Presidential Election year, we feel that the funds
6 that we have available now we could -- we could
7 theoretically -- we could undertake this.

8 There are -- in terms of training for --
9 training for elections and new initiatives, that's
10 already -- we're already directed to do that. So our
11 agency as a whole is -- there's some things you
12 anticipate and you know and you plan for, and we're
13 already there, sir. Because what we will have to do
14 is we'll have to prioritize in terms of maybe some new
15 initiatives versus -- that are not legislatively
16 mandated versus those that you-all mandate to us.

17 SEN. WHITMIRE: Okay. I yield at this
18 time.

19 SEN. DUNCAN: Sen. Watson, you're
20 recognized.

21 SEN. WATSON: Thank you, Mr. Chair, and
22 thank you for being here. I know it's been very long.

23 And, Members, one bit of information.
24 Yesterday, not today, but yesterday, although it feels
25 like one day, was his ten-year old son's birthday, and

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1 he stayed with us all during that period of time,
2 snuck away I think briefly to wish him a happy
3 birthday, but we really appreciate your being with
4 us --

5 MR. SHORTER: Thank you.

6 SEN. WATSON: -- and hope you will tell
7 him we said happy birthday.

8 Just a couple of quick questions. One
9 is you shared with me some numbers on a piece of
10 paper, and I don't know what the paper was created
11 for, but it has at the top of the page the number 5,
12 and then it says "Number of voters who have registered
13 since 2006 without a driver's license number." What
14 was this document created for?

15 MR. SHORTER: Sir, this document was
16 created -- Senator, this document was created in a
17 response to questions that were asked of our staff
18 last week by House Elections.

19 SEN. WATSON: Okay. And in that, what
20 you did is you created two sets of numbers: One was a
21 set of numbers of voters who registered since
22 January 1, 2006. And explain for me again why that's
23 an important number date.

24 MR. SHORTER: When the Help America Vote
25 Act was passed in 2002, there was a requirement put in

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1 the provisions of the Help America Vote Act for
2 uniformity standard purposes for the driver's license
3 to be a required form of ID in terms of registration.
4 Prior to January 1, 2006, it was optional as to
5 whether or not you included your driver's license on
6 your voter registration application.

7 The voter registration application
8 now -- the first thing it asks for in Section 8 is
9 either your driver's license and your Texas -- or your
10 Texas ID, and that's a requirement if you have one.
11 Prior to January 1, 2006 it was optional.

12 SEN. WATSON: Okay. So the numbers you
13 came up with you demonstrated -- and I think we had
14 had some conversation -- Sen. Fraser and I had had
15 some conversation earlier in the day. And when you
16 look at those who have registered since January 1,
17 2006, the key date that you mentioned, and you look at
18 those numbers, about 91.9 percent have registered
19 using a driver's license. Is that correct?

20 MR. SHORTER: Using a driver's license
21 or social security number.

22 SEN. WATSON: Well, here is the way --
23 let's make sure we're clear on this. The first
24 category of numbers who registered with a driver's
25 license, and I guess that's with a driver's license

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1 exclusively. Is that correct?

2 MR. SHORTER: That is correct, sir.

3 SEN. WATSON: And then the second
4 category is those who registered with a social
5 security number, and that would be exclusively with a
6 social security number?

7 MR. SHORTER: That is correct.

8 SEN. WATSON: And then the third
9 category would be those who did something you don't
10 really have to do, but they did it, and they filled in
11 both driver's license and social security?

12 MR. SHORTER: That is correct.

13 SEN. WATSON: So if I wanted to identify
14 the number of people who registered with a Texas
15 driver's license and get a total number, I would add
16 Category 1 and Category 3?

17 MR. SHORTER: That is correct, Senator.

18 SEN. WATSON: Now, something else you
19 did in response to the question from House Elections
20 was you said "In addition agency staff queried the
21 entire statewide file which reflects the following
22 breakdowns concerning identification numbers for all
23 voters." So that would be folks with voter
24 registration certificates, voter registration
25 certificates including those from before January 1,

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1 2007?

2 MR. SHORTER: That is correct. That's
3 everyone in our vote registration system.

4 SEN. WATSON: And those folks weren't
5 required, as you've said, to utilize a driver's
6 license or social security number?

7 MR. SHORTER: Yes, sir.

8 SEN. WATSON: And that -- when we look
9 at those numbers, and you have the same categories,
10 you have number of voters with a driver's license,
11 again exclusively, number of voters with a social
12 security number exclusively, number of voters with
13 both and the number of voters with neither. When we
14 put those numbers together, we know that about
15 25 percent of the population that have voter
16 registration certificates don't indicate that they
17 have -- that they didn't use a Texas driver's license
18 to get that. Is that right?

19 MR. SHORTER: Yes, sir.

20 SEN. WATSON: Now, you also would have
21 no way of knowing in either of those that have been
22 registered since January 1, 2006 or those that have
23 been registered since well before that time who might
24 have lost their driver's license during that period of
25 time?

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1 MR. SHORTER: No, sir.

2 SEN. WATSON: And the Secretary of
3 State's Office wouldn't have any way of knowing whose
4 driver's license might have been expired for over two
5 years now?

6 MR. SHORTER: If they already have their
7 voter registration card.

8 SEN. WATSON: Right. So, for example,
9 if I registered to vote, let's say ten years ago, just
10 to use a round number, I wouldn't have been required
11 to use a driver's license to register. Is that
12 correct?

13 MR. SHORTER: Correct.

14 SEN. WATSON: And if I continue to vote
15 on a regular basis, as I understand it, I am
16 re-registered each time I register to vote or I go
17 vote. Right?

18 MR. SHORTER: Yes, sir.

19 SEN. WATSON: So if I lost my driver's
20 license nine years ago but I continue to register, I
21 might be a registered voter in the State of Texas
22 maybe even use my driver's license when I registered,
23 but I no longer would have a driver's license?

24 MR. SHORTER: That's a possibility, sir.

25 SEN. WATSON: No one has asked the

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1 Secretary of State's Office to do any sort of studies
2 or provide any information demonstrating whether there
3 are certain populations or demographic groups in Texas
4 that are less likely to have a driver's license and
5 use their driver's license when they apply for a voter
6 registration certificate, have they?

7 MR. SHORTER: To my knowledge, no, sir.

8 SEN. WATSON: And the truth is you
9 wouldn't have any way of putting that data together,
10 would you?

11 MR. SHORTER: Not as an agency alone.

12 SEN. WATSON: Well, if I told you that
13 the Texas Department -- you'd have to go to DPS?

14 MR. SHORTER: Probably. That's one of
15 the agencies that pops into my head.

16 SEN. WATSON: And I think we talked a
17 little bit earlier today -- I think I showed you an
18 answer that DPS has given. You wouldn't be surprised
19 to know that DPS is not aware of any studies regarding
20 a way to demonstrate whether certain populations or
21 demographic groups are less likely to secure a
22 driver's license than others, you weren't surprised
23 when I shared that with you earlier today, were you?

24 MR. SHORTER: No, sir. I recall.

25 SEN. WATSON: Yeah. Thank you very

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1 much, and I really do appreciate it along with
2 everybody that you've given us so much time.

3 SEN. DUNCAN: Thank you, Sen. Watson.
4 The Chair recognizes Sen. Patrick.

5 SEN. PATRICK: Thank you, Mr. Chairman.
6 Just a quick question. There was an earlier comment
7 made that it was very unlikely that someone would vote
8 twice in 30 minutes. But the truth is if someone did
9 fraudulently get, let's just say ten voter
10 registrations, and they didn't send in a name like
11 Mickey Mouse but sent in a very normal name that
12 wouldn't catch anyone's attention. And if I had ten
13 cards or that person had ten cards, they could go to
14 one precinct and vote, and they could go down the
15 street to another precinct and vote --

16 MR. SHORTER: (Nodded)

17 SEN. PATRICK: -- and another precinct
18 and vote because they'd go in over a different
19 registration card each time.

20 MR. SHORTER: Okay.

21 SEN. PATRICK: So a person could, if
22 they wanted to, or they could register in the same
23 precinct and go back three days later if they started
24 during early voting. Right?

25 MR. SHORTER: Repeat your -- repeat the

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1 last part of your question.

2 SEN. PATRICK: The last part of the
3 question, if you had registrations in the same
4 precinct, you could go back over a period of multiple
5 days if you were willing to take that risk and vote.
6 So a person could vote more than once. I mean, it's
7 not an extreme thought that someone could register
8 under several different names.

9 MR. SHORTER: It's a hype -- it is one
10 of those hypotheticals that could happen.

11 SEN. PATRICK: All right. Thank you.

12 SEN. DUNCAN: Thank you, Sen. Patrick.
13 The Chair recognizes Senator -- do you want to go
14 ahead, Sen. Watson, and enter -- you've got a document
15 you want to enter?

16 SEN. WATSON: Yeah, let me just ask a
17 quick question. I should have done that. Do you have
18 a clean copy of the sheet that has Question No. 5, the
19 answer from the House Elections Committee that we
20 could make an exhibit for our record?

21 MR. SHORTER: Yes, sir.

22 SEN. WATSON: Okay. We'll wait until
23 you're done, but if you'll just remind me of that,
24 we'll attach that after your testimony.

25 MR. SHORTER: Yes, sir.

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1 SEN. WATSON: Thank you very much.
2 Thank you, Mr. Chair, for letting me do that out of
3 order.

4 SEN. DUNCAN: The Chair recognizes
5 Sen. Davis.

6 SEN. DAVIS: Good morning.

7 MR. SHORTER: Good morning.

8 SEN. DAVIS: I join my colleagues in
9 saying thank you to you for staying so long with us.
10 And I have a very quick question for you. I apologize
11 if you've already asked -- been asked this question
12 and answered it, but what is the amount of money that
13 the Secretary of State has set aside in anticipation
14 of the possibility of having to educate our voter
15 community about the requirements -- the new
16 requirements that would be placed upon them under the
17 Senate Bill that we're looking at today?

18 MR. SHORTER: We haven't determined the
19 actual amount, Senator. We are looking at all of our
20 opportunities and looking at the available resources
21 we already existed -- already have. We know right
22 now -- if there were no other funding, we know that we
23 have access to \$2 million through our current HAVA
24 Funds for voter education.

25 What we need to do now is -- and we feel

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1 comfortable based on the projections -- being that it
2 is not a Presidential Election year, we feel
3 comfortable that we can do what needs to be done
4 within that window. There are also some opportunities
5 potentially for us to maybe draw down some additional
6 HAVA Funds. We're not -- we're investigating that as
7 well.

8 So what we're looking at is if this bill
9 is passed as it is, staff is looking at, based on
10 access to HAVA dollars, what would it cost to do this,
11 to implement this, to do the training, to do the voter
12 education statewide. We don't have those figures yet.
13 However, based on past precedent within the agency and
14 with the access to those federal funds, we feel like
15 we can do it with those funds and be consistent with
16 how we've done it every year.

17 SEN. DAVIS: Let's say we weren't
18 examining the issue that's before us right now and we
19 weren't going to create any kind of new voter ID
20 requirement in the State of Texas. What would the
21 Secretary of State's Office have used that \$2 million
22 amount for? What kind of educational programs do you
23 typically engage in?

24 MR. SHORTER: Well, we don't -- we don't
25 anticipate this particular bill consuming all of

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1 that -- those funds. For instance, our entire effort
2 last year would focused on some key things. And if
3 you don't mind, I'd like to kind of just --

4 SEN. DAVIS: I'd appreciate that.

5 MR. SHORTER: -- share with you some of
6 the ideas from talking with our staff on voter
7 education. In 2008 we have what's called a Vote Texas
8 Program. That's our voter education program. That
9 focuses on newspaper, radio, TV, PSAs, interactive
10 Web. It allows us an opportunity to be creative to
11 reach the people where they are, and we do several
12 things: We focus on the basics of education. Number
13 one, how to vote, what needs to happen to vote, where
14 to vote, where are you going to vote, what do you
15 bring -- what do you need to bring with you to vote.
16 If this were -- if this bill were to pass, what would
17 you need to bring to vote would be the -- it would
18 change.

19 We're at a point in our development
20 where we can now make those changes. Theoretically
21 what happens in the Secretary of State's Office is we
22 get through with the session, we look at all of the
23 changes and we use the summer months -- we use the
24 spring to answer all your questions and start
25 planning. We have certainty after the session as to

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1 what you as a legislative body have given us, the
2 mandates and directions you have given us. We use
3 that time then to start implementing, plugging in.

4 One of the other things we do is what is
5 the process and -- what is the actual process and then
6 what are the rights of the voters. So based on that,
7 it seems very plausible that we would be able to take
8 the directives of this bill or any bill that you as a
9 legislature provide and fit it into that formula and
10 meet HAVA requirements for what we are mandated to do
11 in terms of educating our voters.

12 SEN. DAVIS: And in the past when you've
13 implemented a program like that, and I gather from
14 what you're saying you've engaged in exactly this kind
15 of --

16 MR. SHORTER: Yes, ma'am.

17 SEN. DAVIS: -- education effort before,
18 what would the cost be in a typical election cycle for
19 you to administer that program?

20 MR. SHORTER: Last year we -- last
21 year -- the last election cycle was \$3 million.

22 SEN. DAVIS: It was \$3 million. And
23 that's \$3 million educating a voter group that has for
24 many years been operating under the same rules
25 repeatedly. Correct?

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1 MR. SHORTER: Yes, if there were -- I
2 came to the agency during the middle of that process.
3 If there were legislative changes during the last
4 legislative cycle, those changes were intertwined into
5 the voter education process. I'm not -- I'll have to
6 go back and ask what changes were made during the last
7 legislative session that would have affected how we
8 rolled out this particular -- last year's initiative.

9 For instance, within all of that,
10 there's also the Project Vote where we start -- the
11 education process of educating voters starts also at
12 the age of educating our school-aged kids.
13 1.1 million people -- 1.1 million students in over 300
14 school districts last year participated in Project
15 Vote. So those were some extra things that we've
16 always done even with legislation like this we will
17 still be able to do because we have it down to a
18 science now on how to do it, and we've been able to
19 bring those costs down.

20 SEN. DAVIS: And now that you have it
21 down to a science and in the last election cycle given
22 that you have it down to a science, you've spent, you
23 said, about \$3 million on the program. Could you
24 anticipate a scenario where with a new voter ID
25 requirement, one that is, well, quite lengthy in terms

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1 of the amount of paper that it this takes up on the
2 bill that's been proposed, could you anticipate given
3 the need to educate on so many new features of a voter
4 program that it might cost you more than \$3 million to
5 educate Texans on that program?

6 MR. SHORTER: Senator, based on past
7 precedent, I think it will be highly unlikely that the
8 expenses would increase that much because many of the
9 things that this bill is requiring us to do we're
10 already doing it on legislation that has existed for a
11 long time.

12 When we have a poll -- when we have the
13 poll worker training or the training for Election
14 Officials, it's very detailed information, and there
15 are little tweaks that the legislature makes, and
16 these are not 30-minute trainings. These are
17 generally two- to three-day trainings. So it's not
18 like if we -- if this bill were implemented the
19 training needs would be -- or the training modules
20 that will be developed would be any different than the
21 modules that we are already developing because the
22 ones we're developing now are pretty extensive.

23 SEN. DAVIS: And did the \$3 million
24 figure that you -- that you cited a moment ago on your
25 voter outreach program in the last election cycle, did

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1 that include the costs of training poll workers on
2 whatever tweaks came in the last legislative session?

3 MR. SHORTER: It is my understanding
4 that it did, but, Senator, I don't mind verifying that
5 for you to make sure that it's all-inclusive.

6 SEN. DAVIS: I would appreciate that.
7 And if you could provide us with information in terms
8 of exactly what that poll training looked like, the
9 poll worker training looked like, I would appreciate
10 that.

11 MR. SHORTER: Senator, we're very
12 excited about our poll worker training because we have
13 two aspects: It can be done in person, but we also
14 have poll worker training now that can be done on
15 line. And one of the things we're really trying to
16 do -- and with the hope of encouraging more people to
17 volunteer or sign up to be poll workers.

18 SEN. DAVIS: Would you anticipate that a
19 bill suggesting the changes of this magnitude might be
20 a more complex training program -- that might require
21 a more complex training program than you've had to
22 engage in in the past where the legislature may have
23 tweaked, to use your word, the voter requirements?

24 MR. SHORTER: And maybe, Senator, using
25 the word "tweaked" was not probably the appropriate

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1 word to use. I don't see anything at this point that
2 would cause me as the operations person within the
3 agency to be alarmed.

4 SEN. DAVIS: Okay. Thank you. I
5 appreciate it.

6 SEN. DUNCAN: All right. Thank you,
7 Sen. Davis. There are no other members in the queue
8 to ask questions. So, Mr. Shorter, you are excused.
9 Thank you for your testimony.

10 MR. SHORTER: Thank you, Mr. Chairman.

11 **TESTIMONY BY DENNIS BOREL**

12 SEN. DUNCAN: The Chair calls Dennis
13 Borel. Mr. Borel, do you have written testimony?

14 MR. BOREL: (Inaudible)

15 SEN. DUNCAN: Do you have pictures for
16 us? All right. We'll need to get those marked at the
17 right time.

18 MR. BOREL: Good morning. My name is
19 Dennis Borel with the Coalition of Texans with
20 Disabilities. Yes, I am from the Texas --

21 SEN. DUNCAN: Hang on just a minute.

22 MR. BOREL: Sure.

23 SEN. DUNCAN: We need to get your timer
24 started.

25 MR. BOREL: Okay.

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1 SEN. DUNCAN: All right. You're off.

2 MR. BOREL: Dennis Borel with the
3 Coalition of Texans with Disabilities, a cross
4 disabilities statewide organization, and I think
5 listening to this day has been tremendously
6 interesting. I haven't heard a lot of talk about
7 people with disabilities. We've talked about a lot of
8 different demographic groups. So I will use my time
9 to talk about people with disabilities and my
10 experiences with them and how I think this bill may
11 impact them.

12 It's been -- one of the most fun things
13 I've done for the last about four or five years is
14 work with the Secretaries of State, starting with
15 Mr. Conner, then Roger Williams and Phil Wilson. I
16 met Secretary Andrade recently and look forward to
17 working with her, but working on HAVA stuff and most
18 specifically the opportunities to go around the state
19 and do training sessions on accessible voting and
20 accessible voting technology to disability groups
21 around the state. I've been from El Paso to Beaumont
22 to Laredo to Odessa and Dallas, points in between.
23 It's been a pretty interesting experience, and I've
24 met some incredible people doing that, and it's been
25 inspiring.

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1 In a few of the -- a few of the most
2 inspiring ones, I've worked with a lady that was
3 totally without sight, and she was able to use the new
4 voting technology to cast a private ballot for the
5 first time. I met another guy with very significant
6 cerebral palsy. He didn't even have enough control to
7 speak, and he had -- he wore a cap with a stick that
8 came perpendicular out of his forehead, and he would
9 use a speak synthesizer, but his brain was clear and
10 fine. And using that stick out of his cap he was able
11 to work a voting machine on his own.

12 But to me the best was a gentleman I met
13 who was a member of the paralyzed -- Texas Paralyzed
14 Veterans. He had broken his neck very high up, and he
15 has no movement below the shoulders. He operates his
16 power wheelchair with a sip and puff device. And
17 incredibly he told me this story about going to his
18 polling place and hooking up his sip and puff device
19 to his machine, and for the first time since he broke
20 his neck was able to cast a secret ballot. And, yes,
21 there were tears in his eyes when he told me this
22 story. These are the kinds of things that I have
23 really loved doing for several years now.

24 To me perhaps the most amazing one was
25 out in Palestine. I was invited to come out there and

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1 do a training. I went out there and I -- there's some
2 photographs you're looking at. I didn't give you
3 written stuff. By this time of night, it's better to
4 look at photographs anyway. But I went out to
5 Palestine and I got there and they said "Okay. Now
6 we're going to take off and take you where you're
7 going to go for your training, and we went to a
8 sheltered workshop, which, you know, is not something
9 I particularly like. It's a place where people with
10 disabilities, cognitive disabilities spend the day.
11 They were assembling nuts and bolts all day, and they
12 get some piece -- piece of work payment out of it.

13 But going in there I was kind of
14 wondering "Well, how am I going to -- how am I going
15 to do this training?" I had the local County Clerk
16 with me and an accessible machine, and we set it up.
17 And I quickly found out that even though I work with
18 people with disabilities all the time I'm capable of
19 making misassumptions. Even though these were folks
20 with cognitive disabilities, they knew who McCain was,
21 they knew who Obama was, they knew a Presidential
22 Election was coming up. A handful of them were
23 already registered. The others got registered there
24 by the County Clerk, and they were tremendously
25 enthusiastic. In fact they were the most enthusiastic

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1 group I trained in the four years I've been doing
2 this. They loved working the machine. They were
3 excited about it. It told me a lot.

4 You know, this group, I'm quite sure
5 that not a single one of them had a driver's license.
6 I'm quite sure that none of them had a passport. I
7 doubt that any had utility bills in their name. I
8 don't think any of them were licensed hunters,
9 fishers, carry a concealed weapon. Some may have
10 Medicaid cards.

11 But the thing I was left with at the end
12 of that day as I was left with at every single one of
13 these trainings is all of us see the right to vote as
14 something precious. I think for our citizens with
15 disabilities it's at an even higher level. It's even
16 more precious to them, how much they value it and to
17 be able to do it on their own.

18 You know, I mentioned that they don't
19 often have photo IDs, in fact they rarely do. And I
20 tried to find some statistics on this and, you know,
21 I've heard a few people talk about that some things
22 are not tracked. Well, one thing I found out that we
23 don't track is whether a driver has a disability or
24 not. We track if they need corrective lenses of other
25 things like that, but not disabilities. So I have to

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1 rely on only my observations and spending the last
2 nine years going around Texas and working with groups
3 of people with disabilities and my own anecdotal ideas
4 about it. And I'd have to say that there's no doubt
5 that people with disabilities just don't have a
6 driver's license like the rest of the population.
7 They simply maybe cannot operate a vehicle, maybe they
8 don't see well enough, maybe they don't have enough
9 manual dexterity, but their incidents of driver's
10 license is certainly far below that of the general
11 population.

12 As far as things like passports, people
13 with disabilities are three times as likely to be
14 living in poverty as a general population. They're
15 not doing a whole lot of international travel. That's
16 not to say that there aren't people with disabilities
17 doing that, not to say that people with even very
18 significant disabilities have driver's licenses, even
19 quadraplegics, but as a general -- a generalization
20 they're less likely to have those kinds of photo IDs.

21 You know, I was thinking about this, and
22 I think that there's probably only one other
23 demographic group that has maybe a lesser
24 participation in driving and passports, and I think
25 that would be the very elderly. You know, I think

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1 those two groups are kind of off by themselves of
2 having a little bit less access to that.

3 Now, I do think that there are some of
4 those alternative credentials that could work, but I
5 think in almost every single case the likelihood of a
6 person with a disability having one of those
7 alternative credentials is far less than in the
8 general population with the sole exception of the
9 Medicaid card.

10 And the other thing is in our state,
11 Texas is better than some other states. Some other
12 states do not allow people with cognitive disabilities
13 to vote. We do in Texas; we do. But, you know,
14 people with cognitive disabilities are recently
15 returned veterans with traumatic brain injuries.
16 Sometimes their ability to gather all the documents
17 they need to go somewhere is not so good. Sometimes
18 they're not so good at doing that. Sometimes they
19 might end up at the polling place and maybe they
20 forgot one of the things they need. Or if they had
21 that traumatic brain injury and they have a short-term
22 memory condition, they just simply forgot to bring
23 them, forgot their ID.

24 You know, to me it comes down -- the one
25 question I keep coming down to is in any piece of

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1 legislation, would this affect people with
2 disabilities more than other groups? And I think this
3 one does, and I think it does that. There would be a
4 level of effort required of them to line up everything
5 they need more so than other segments of our
6 population.

7 With that, I'll take any questions if
8 you have them.

9 QUESTIONS FROM SENATE FLOOR

10 SEN. DUNCAN: Thank you, sir.

11 Sen. Zaffirini, you're recognized.

12 SEN. ZAFFIRINI: Thank you,
13 Mr. Chairman.

14 Mr. Borel, thank you for your very
15 compelling testimony. I hope that everyone listened
16 to you and listened to you carefully. Are persons
17 with disabilities less likely to have photo IDs?

18 MR. BOREL: Yeah, absolutely, certainly
19 in the case of the driver's licenses. Obviously one
20 of my member organizations is the American Council for
21 the Blind of Texas. I mean, 100 percent of them don't
22 have driver's licenses. Other people with cerebral
23 palsy, quadraplegic spinal cord injuries, amputations,
24 cognitive disabilities, traumatic brain injury, all
25 have far less likelihood of driver's licenses and

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1 passports. It's more a function of the fact that --
2 generally considered to be the lowest income
3 demographic group in our society and, therefore, less
4 likely to travel.

5 SEN. ZAFFIRINI: Have you read Senate
6 Bill 362?

7 MR. BOREL: I have; I have, yes.

8 SEN. ZAFFIRINI: So you're familiar with
9 the other forms of documentation that can be used to
10 prove one's identity?

11 MR. BOREL: Pretty much. I don't know
12 if I can recall every single one of them off the top
13 of my head.

14 SEN. ZAFFIRINI: Are persons with
15 disabilities less likely to have that kind of
16 documentation available to prove their identity?

17 MR. BOREL: Yeah, absolutely. You know,
18 very few would have a permit to carry a concealed
19 handgun. There are people, even people visually
20 impaired, even people totally blind, even people with
21 quadraplegics, that do have hunting licenses. But
22 I'll tell you as a rule, they're far less likely to
23 have hunting licenses. They're also far less likely
24 to have utility bills in their name.

25 SEN. ZAFFIRINI: What additional

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1 barriers do persons with disabilities have in
2 obtaining the kinds of identification required in this
3 bill?

4 MR. BOREL: Uh-huh. Well, there is the
5 monetary thing as an extremely low-income group, and
6 then just getting around and gathering that
7 information, you know, being reliant on public
8 transportation or transportation provided by other
9 people or having to have the caregiver with you, or
10 perhaps a person is living in an institution like a
11 nursing facility or intermediate care facility for the
12 mentally retarded or even in an assisted living
13 center. These are all folks that just are not as
14 mobile as the rest of us, and they're not getting
15 around as well as the rest of us.

16 SEN. ZAFFIRINI: Thank you. Is the
17 notice provided for in Senate Bill 362 sufficient to
18 ensure access to accurate information about this new
19 ID requirement for the full range of persons with
20 disabilities with whom you work?

21 MR. JOHNSON: No, not in my mind. I
22 think we have a pretty aggressive campaign, the HAVA
23 campaign. And like the gentleman in front of me,
24 Coby, was talking about the Vote Texas, those things.
25 The first Vote Texas effort was a \$5 million effort.

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1 The second was a \$3 million effort, and that was about
2 accessible voting for the most part. But that
3 actually took stuff around, put stuff on PSAs, on TV.
4 It did radio ads. It funded people like me to go out
5 and do hands-on types of training. All those kinds of
6 things, all those variety of things are needed. I
7 think the written notice is just inadequate frankly.

8 SEN. ZAFFIRINI: What else would be
9 needed if this bill were passed to ensure persons with
10 disabilities really understood this law?

11 MR. BOREL: Well, I would -- well, I
12 believe the Vote Texas campaign was successful, but
13 you know, even though we're, I believe, five years in
14 to Vote Texas I still think there's an additional need
15 just for the accessibility components of HAVA. So I
16 think it's not a short-term deal. I think this would
17 need to be planned over perhaps several biennium. I
18 really believe in the traveling road show, the
19 hands-on deal where you go out to disability groups
20 and out to their communities and find out where they
21 are and do it face to face. That would be my
22 recommendation.

23 SEN. ZAFFIRINI: What effect do you
24 believe that this bill, if it becomes law, would have
25 on the turnout of persons with disabilities on

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1 election day or early voting?

2 MR. BOREL: Yeah, that's -- I've thought
3 about this a lot, Senator. I would say at the -- at
4 the beginning of HAVA, I would have said that there
5 were two groups of voters with disabilities. The
6 first group had gone to vote and voted, but had a hard
7 time doing it and was less likely to go back, and the
8 second group never went because they heard their
9 friends talk about how they couldn't get in the
10 polling place or couldn't get a private ballot. So
11 there was kind of like this word of mouth negativity.

12 I think in the last few years as
13 successful voting technology has come into play,
14 polling places have become more accessible, I'm seeing
15 a third category of voters with disabilities, ones
16 that are telling their friends that "I did have a
17 successful experience."

18 And I think if we set up experiences
19 where voters with disabilities go to the poll and they
20 don't have the right ID, and they will be less likely
21 to have this ID and they haven't learned about it and
22 they do a provisional ballot or they just simply
23 leave, then those kinds of word of mouth stories will
24 spread, and I think that will have an affect on some,
25 a negative side frankly.

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1 SEN. ZAFFIRINI: Thank you. Thinking
2 specifically of Advocacy, Incorporated, do you believe
3 that persons with disabilities who work with Advocacy,
4 Incorporated would be able to meet the identification
5 standards of this bill?

6 MR. BOREL: You know, the ones who work
7 with Advocacy, Incorporated, I bet they would because
8 in many ways activists people with disabilities are
9 going to -- have figured out some way to get a photo
10 ID, whether it's like the DPS, the state
11 identification. I'd be more concerned about the
12 people who aren't necessarily activists who are more
13 maybe staying in their communities and their home most
14 of the time, maybe in an institution, maybe in an
15 assisted living center.

16 SEN. ZAFFIRINI: What effect do you
17 believe the bill would have on the number of
18 provisional ballots cast by voters with disabilities?

19 MR. BOREL: Well, I think it would
20 clearly increase them because they would be casting
21 them instead of just a regular ballot. I'm a little
22 unclear about whether they would have to then go back
23 again and show correct ID -- is that correct -- or is
24 it -- would it be counted just as the initial
25 provisional ballot? That I'm a little unclear about.

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1 But if they would have to go back, you
2 know, return back and show correct ID, now that's
3 another trip. And for people that aren't all that
4 mobile who have to rely on others, who don't see well,
5 who use wheelchairs, who use walkers, who are 85, 90
6 years old, any time you're making a second trip to go
7 do something, you're less likely to do it.

8 SEN. ZAFFIRINI: What are the most
9 pressing issues reported by voters with disabilities
10 in using the Advocacy, Incorporated hotline?

11 MR. BOREL: I think they need to know
12 more about it, but I tell you the one I hear more
13 about is poll workers, you know, that -- the poll
14 workers are -- haven't perhaps set up the site as well
15 to make it as accessible as possible, don't understand
16 the accessibility features of the voting machines,
17 haven't had enough training on how to effectively
18 interact with a voter with a disability and how to
19 deal with someone who perhaps has a speech impediment,
20 who doesn't hear, who has very limited use of their
21 arms and hands. The poll worker issue and poll worker
22 training is, in my opinion, the top issue for voters
23 with disabilities.

24 SEN. ZAFFIRINI: And, of course, the
25 bill doesn't address any of those issues?

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1 MR. BOREL: Not that I'm aware of, no.

2 SEN. ZAFFIRINI: Not that I'm aware of
3 either.

4 MR. BOREL: Yeah.

5 SEN. ZAFFIRINI: You looked at the bill
6 and you looked at the fiscal note, and I know that you
7 heard our discussion regarding the cost of
8 implementing Senate Bill 362. I am one of many
9 persons I know who do not believe the fiscal note that
10 indicates that there would be no fiscal impact to the
11 state. How would you better use that money, the money
12 that would be used to implement Senate Bill 326, in
13 terms of working with persons with disabilities and
14 ensuring their access to vote?

15 MR. BOREL: Good question. I'm really
16 glad that I followed Coby here because he was talking
17 about how they had a budget for this kind of stuff,
18 the HAVA money. And it's still my opinion that the
19 accessibility, the polling place features, the
20 accessible technology, voting technology features that
21 are part of HAVA, we're not done with that project.
22 There's a lot more out there. Whenever I go out,
23 there's just, you know -- I mean, we could be doing
24 this several more years at the same level, I think.

25 You know, I want to encourage people to

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1 vote. I want to encourage people with disabilities to
2 go out and vote. And to me the Vote Texas projects
3 have done that. That's what I'd like to see happen.

4 SEN. ZAFFIRINI: Thank you very much for
5 your testimony and for answering my questions. You
6 certainly are an inspiration.

7 MR. BOREL: So are you, Senator.

8 SEN. DUNCAN: Senator Ogden?

9 SEN. OGDEN: Mr. Borel, thank you for
10 your testimony. And, Sen. Zaffirini, thank you for
11 your good and detailed questions. I mean, you raise
12 some very important issues, but I'd like to clarify
13 that the type of documentation that can be used in
14 lieu of a photo ID is very similar to the type of
15 documentation that somebody -- or is the same as the
16 type of documentation of an individual who has some
17 sort of cognitive disability or other kind of
18 disability that they must produce in order to
19 receive state services or in order to receive
20 healthcare, whether you're talking about a Medicaid
21 card or Medicare card, correspondence from the
22 State Department of Health and Human Services,
23 correspondence from the Social Security
24 Administration, a social security card.

25 So I would think that it -- and I would

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1 ask you this: It would be very, very rare based on
2 the way I read this bill to find an individual who
3 wouldn't have several of the types of identification
4 that are acceptable, even if they don't have a
5 driver's license. Wouldn't you agree?

6 MR. BOREL: Well, what I would say,
7 Senator, is if you took a population -- a group of
8 people from the general population and a group of
9 Texans with disabilities and lined them up on every
10 one of those types of credentials with the exception
11 of the Medicaid card, I think the general population
12 would be more likely to have them.

13 SEN. OGDEN: Well, but you can't make
14 that exception because the Medicaid card is just as
15 valid as any other.

16 MR. BOREL: It is.

17 SEN. OGDEN: If fact if you have a
18 Medicaid card, you will get monthly correspondence
19 from the state notifying you that you're still
20 eligible for Medicaid, and that's your two
21 requirements, you're done.

22 MR. BOREL: Well, that's true, sir. But
23 again, if you look at the full list of alternative
24 credentials, that's perhaps two of the alternative
25 credentials where the person with the disability might

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1 have the access edge whereas the others, they do not.

2 SEN. OGDEN: Might have the what?

3 MR. BOREL: An edge in having access to
4 those things like a Medicaid card.

5 SEN. OGDEN: Well --

6 MR. BOREL: I mean, they'd be less
7 likely to have it.

8 SEN. OGDEN: You know, maybe, maybe. I
9 mean, the people of which you speak are going to have
10 more access to some of those cards than somebody like
11 me, for example. I know I've got a driver's license,
12 so it's not a problem, but --

13 MR. BOREL: I was referring to the whole
14 list.

15 SEN. OGDEN: I guess the point is while
16 we're going through the discussion here is that it
17 seems to me like almost every -- if not every single,
18 almost every single individual which you described who
19 is receiving some sort of state assistance or needs
20 medical assistance almost certainly has to have the
21 type of documentation needed to receive those
22 circumstances -- that assistance, which will also be
23 more than adequate to vote, in my opinion.

24 MR. BOREL: Well, Senator, I know you're
25 aware that to be Medicaid eligible in this state you

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1 really are the very poorest of the poor. And if
2 you're just plain poor and not the very poorest of the
3 poor, you don't have a Medicaid card. Thank you.

4 SEN. DUNCAN: There are no other members
5 in the queue. You can be excused. Before you do
6 that, though, we will introduce Exhibit 36, which is
7 the photograph that you provided, and that will be in
8 the record.

9 (Exhibit No. 36 marked and admitted)

10 **TESTIMONY BY GARY BLEDSOE**

11 SEN. DUNCAN: The Chair calls Gary
12 Bledsoe. Mr. Bledsoe, before you begin, let's -- you
13 have written testimony as well.

14 MR. BLEDSOE: I do.

15 SEN. DUNCAN: And we will submit that in
16 the record as Exhibit 37.

17 (Exhibit No. 37 marked and admitted)

18 MR. BLEDSOE: Thank you.

19 SEN. DUNCAN: Yes, sir. If you'll state
20 your name and who you represent, and you'll have ten
21 minutes.

22 MR. BLEDSOE: Okay. Thank you,
23 Mr. Chairman. My name is Gary Bledsoe. I'm President
24 of the NAACP here in Texas. I want to thank all of
25 you for staying here so long. Obviously this is a

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1 very important matter. I probably can't be held to be
2 responsible for what I say at this time, but I will
3 try to be as clear as possible.

4 The NAACP is a 100-year old
5 organization. We have always been a multiracial
6 organization, and indeed we've been present here in
7 Texas since 1915 and have a long history with voting
8 rights within this state. And indeed we try to
9 identify issues that are problematic without regard to
10 any partisan issues, and I'm hoping that the
11 information that I provide here can provide a good
12 discourse and understanding of how we see the
13 legislation that is at issue here.

14 I know some years back when the Wolens
15 bill was up for consideration, we thought that would
16 be problematic. His party didn't make a difference,
17 and we were there to oppose that legislation, and we
18 feel the same way about the bill here, SB 362.

19 And I took a little bit of a different
20 tact in how I prepared the written testimony, but
21 based on a number of things that I've been hearing
22 today and maybe some of the questions that some of you
23 have had, I thought maybe what I would do here is
24 somewhat try to focus on a couple of those issues
25 because I think they are important.

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1 You know, to begin with, I think that we
2 have to look at this matter in terms of what the
3 constitutional requirements might be and secondarily
4 what the requirements of the Voting Rights Act might
5 be. And in that regard, if we can say that there is
6 an impact, a noticeable impact on African-Americans or
7 Latinos, that we have to look at the question of
8 whether or not there might be retrogression or whether
9 or not there might have been a way of narrowly -- more
10 narrowly tailoring the actual statute that we're
11 talking about.

12 Now, I think that for a number of just
13 very clear reasons to me we would have a negative
14 impact on people of color. I think -- number one, I
15 think you've heard many people say today that indeed
16 that there's a lower percentage of individuals who
17 have driver's licenses or photo identification cards
18 and I think that's a fact.

19 I think we've also done -- when we did
20 one of our racial profiling studies with the
21 Department of Public Safety or data, one of the things
22 we were able to determine is that the actual car
23 ownership data indicated that minorities had less
24 access to automobiles and owned fewer automobiles and
25 more were without automobiles at all in their home,

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1 and so this creates more of a burden in terms of the
2 ability to travel.

3 I think also one of the other things
4 that I see in the bill is the -- is the affidavit. So
5 if you look at the affidavit and the affidavit that
6 you have to sign when you don't have the proof
7 according to the bill, that affidavit makes you make a
8 representation that you are -- that you are eligible
9 to vote right then and there. And I know the problems
10 I've had getting people to register to vote who might
11 have had felony histories or what have you, there's a
12 little intimidation. And with the nature of the
13 wording, I think it's very intimidating and
14 threatening and will make individuals feel challenged
15 to sign that particular affidavit.

16 I think also there's the issue with
17 communicating the new requirements of the law so
18 people can be prepared when they go to the polling
19 place in order to vote, in order to be able to vote
20 effectively. And because I think of the nature of how
21 it's been done with the likelihood of not being able
22 to reach all voters the way they need to be reached, I
23 think that when the voters turn out and the ones who
24 will be rejected on election day I think will show --
25 it will show clearly there will be a disparate impact

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1 on racial and ethnic minorities.

2 And one of the things that I can say
3 that also I feel will be a major problem is that --
4 and I went down to Venezuela to be an official
5 election observer down there, and I saw people in
6 lines for eight hours, you know. And they have all
7 these incredible requirements there where you've got
8 to give your thumb print. You have untrained people
9 trying to determine if your thumb print is the same
10 one that's in the computer, you have to show different
11 forms of identification, and it takes a long time to
12 get through those lines. And so you have people in
13 those lines -- they start lining up like 3 or 4 a.m.
14 in the morning.

15 And I think -- not that this would be
16 that burdensome, but I think that we already see in
17 too many minority areas where there's not enough
18 ballots, there are not enough voting machines at the
19 specific locations, the lines are already too long,
20 it's already a major problem. And I think when you
21 add this kind of requirement there, it's going to make
22 it a lot longer and make it more difficult for folks
23 to desire to stay and to be part of the process. So I
24 think indeed that -- for many reasons even beyond
25 that, I think we would have a clear discouraging or

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1 discouragement of African-American voters.

2 Now, there are a couple of things I
3 wanted to mention here. I think that when you look at
4 the law -- when I looked at the bill analysis, the
5 bill analysis talked about problems with registration.
6 It said that because no identification is required
7 during registration, it makes it possible or likely
8 that you will have people who can get -- who can get
9 voter registration cards who may not actually be the
10 person.

11 And so the first thing that grabbed out
12 of me was well, if there is a problem -- but I don't
13 think it's really been shown -- but if there is a
14 problem, why isn't it addressed at the point where
15 there is a problem? And if the point of the problem
16 is at registration, instead of something that will be
17 discouraging to people who are registering to vote,
18 then that is where the focus would be, in my mind.

19 The affidavit again is intimidating. I
20 think I mentioned the long lines.

21 Another thing is when we looked at the
22 categories of information for the nonphoto ID items
23 that are provided for in the bill, there are a couple
24 of things that leap out at me: The general provision
25 that would allow a catch-all because when you're

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1 writing a bill, it's kind of hard to envision and know
2 all the different circumstances where indeed a
3 situation where a person might present something that
4 should be considered proper proof. And I think the
5 fact that there was kind of a laundry list provision
6 that's deleted and not allowed to be used, I think
7 that is problematic.

8 Secondarily, the list of items that are
9 actually there are not really properly comprehensive,
10 in my mind, and they really would discriminate against
11 a number of individuals because of the types of items
12 that are there. And some of the things that are there
13 are kind of private, some things that people may not
14 want to produce or show someone at a polling place.
15 And so I think that by the nature of the documents
16 that are listed there, that they're not reasonable in
17 terms of how they're fashioned.

18 And the bill doesn't state exactly how
19 it will be executed. It leaves a lot of things up to
20 be determined later by the Secretary of State. So
21 exactly how the law will be applied, how it will be
22 interpreted will be a big problem.

23 One of the things that we've seen around
24 the state is -- and we've done -- we've had about five
25 different hearings around the state relating to

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1 election irregularities, and we've found just
2 incredible things all around our state to indicate
3 there's still a real problem with folks understanding
4 and appreciating minorities being able to vote.

5 In this last election cycle, we saw a
6 particular problem with Election Officials. Because
7 of the different ways Election Officials are selected,
8 we had a number of people that were rejected and had
9 real conflicts with individuals who were Election
10 Officials.

11 And I might say it was really
12 broad-based kinds of things that we've seen over the
13 last few years. We've seen hate crimes where white
14 supporters of a black candidate had their home burned.
15 We've seen situations where people were purged from
16 voting lists when they should not have been. We've
17 seen the improper use of off-duty police officers, the
18 use of mailboxes to put intimidating communications.
19 We've seen a lot.

20 **QUESTIONS FROM SENATE FLOOR**

21 SEN. WENTWORTH: Thank you. The Chair
22 recognizes Sen. Ellis of Harris.

23 SEN. ELLIS: Thank you, Mr. President,
24 and thank you President Bledsoe for being so patient.
25 I know you were here earlier today. And you were

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1 wrapping up your testimony, you can submit it, of
2 course. I have some questions I want to ask, but if
3 you just have some summation that you want to add in
4 addition to your testimony, I'd like to hear that.

5 MR. BLEDSOE: Sure. Thank you, Senator.
6 What I was trying to complete was the types of things
7 that we have found around the state in our inquiries
8 in terms of both our -- every election we have a group
9 of lawyers that volunteer and run an 800 line, and we
10 take calls from around the state. And we also have
11 had those five hearings, a couple in Houston, Dallas,
12 Fort Worth, Texarkana out in East Texas, and we found
13 that people were not allowed to tender -- challenge
14 ballots according to law. We've seen individuals that
15 were soldiers in Fort Hood who had their voter
16 registrations who were wrongfully purged from the
17 voting rolls. We've seen just a number of problems
18 that have disenfranchised African-American voters, and
19 it still is a major, major problem throughout the --
20 throughout the state but particularly in the urban
21 areas and East Texas.

22 SEN. ELLIS: Thank you. Mr. Bledsoe,
23 some people would say that the Voting Rights Act is no
24 longer needed, that it's a thing of the past
25 particularly as it relates to Texas. Can you cite

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1 some examples or give reasons that would show why we
2 still need the Voting Rights Act protection in Texas?

3 MR. BLEDSOE: Well, you know, we have
4 had a number of -- you know, I'll thank Attorney
5 General Abbott. You know, he assisted the folks in
6 Prairie View when a situation arose where you had a
7 number of people who were wrongfully purged from the
8 rolls who could not vote in the city election, and you
9 also had I think about a thousand ballots -- I mean
10 voter registration applications that were just sat on,
11 that no one -- just sat on, so the folks were not able
12 to vote in a particular election, but they were found
13 there in a county office, and they were -- and the
14 Attorney General had them file them. But, you know,
15 that was a clear violation of the Voting Rights Act.

16 And we have the situation I mentioned
17 earlier in Wharton County where an African-American
18 candidate for Sheriff had a white couple that were
19 working on the campaign, one was a County
20 Commissioner, and they received a number of hate crime
21 calls, and their home burned down as a result of that.

22 You know, we've had problems in Fort
23 Bend County with there being changes in polling places
24 much too late and not properly publicized in the
25 newspaper. We've had problems there in terms of

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1 individuals who wanted to file -- challenge ballots,
2 and they were not allowed to. We've had problems
3 there where people were sent to the wrong polling
4 places and they ultimately could not vote.

5 We've had all the problems in Dallas
6 County where indeed there are too few ballots that
7 have shown up a number of occasions in Dallas County,
8 and so the lines get long, people get frustrated,
9 people leave.

10 We've had people hire off-duty police
11 officers, and that's in conjunction with making
12 contact with an African-American newspaper, having
13 articles in the newspaper talking about if you have an
14 outstanding warrant, you're going to be arrested. And
15 so you go and hire all the off-duty police officers
16 and stand them outside the polling places to
17 intimidate individuals from voting.

18 So I mean it's just -- there's just a
19 huge number of things that have occurred and have
20 occurred in most places around the state.

21 SEN. ELLIS: Mr. Bledsoe, is there a
22 well-documented history of voter suppression that is
23 specifically related to race and ethnicity in Texas?
24 And how would this voter ID law fit into that history?

25 MR. BLEDSOE: Well, there is a long

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1 history, and our state still hasn't come to where our
2 state needs to be. You know, that's one of the issues
3 before the United States Supreme Court in a case that
4 the NAACP is involved in, and it's going to be argued
5 in April of this year relating to the need for the
6 continued existence of the Voting Rights Act.

7 I think when we look at the history and
8 the continued problems that we've had in a number of
9 areas and fronts and we see the problems with language
10 voters, we see the problem with racial minority
11 voters, those things, the problems are never -- never
12 alleviated because we've continued to have voter
13 intimidation.

14 And when you have voter intimidation --
15 and the record is really replete. I mean, I don't
16 think there's any question that when we look at what's
17 occurred and -- let's take a look at Harris County.
18 This is kind of an unpopular thing to say, but I know
19 there's a coalition that's running a group countywide,
20 and the only ones to lose are really minority
21 candidates that makes you think -- and I talked to
22 Dr. Davidson about that. That cries out to me is
23 there something wrong with that particular election
24 there when you've got a coalition of people running.
25 And people like Goodwill Pierre or people like the

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1 District Attorney actually lose, they happen to be
2 people of color, and so that makes you want to look
3 further at those issues.

4 But we do have the problem all around
5 the state. It continues to be a problem. We've made
6 gains. It's not the same state it was in 1960, but
7 it's not nearly where it needs to be.

8 SEN. ELLIS: That's an interesting
9 comment, and I might add a bipartisan comment because
10 in Harris County where there was a Democratic sweep,
11 for some strange reason the candidates that didn't win
12 in that sweep were the candidates of color primarily.

13 MR. BLEDSOE: And there were also
14 problems when there were -- when there was a
15 Republican sweep with the Republican blacks not
16 winning as well. So that's been a problem both ways
17 in Harris County.

18 SEN. ELLIS: How would this voter ID
19 law, this specific law -- I know you've looked at the
20 statute -- discriminate against people of color?

21 MR. BLEDSOE: Well, what this specific
22 law will do is it will clearly reduce the minority
23 vote, both because of the pressure that will be put on
24 the polling place that will cause the longer lines,
25 that will give more discretion to -- it will give a

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1 lot more discretion to Election Officials that are
2 already having problematic relationships with people
3 of color, and it will -- it has intimidating
4 provisions that will make individuals take a look at
5 the law and say "Well, I'm not sure I want to sign
6 that document." And it will prevent people who were
7 there in good faith from being able to come up with
8 the right information to be able to vote because of
9 the great burdens it will place on them.

10 I know that I got -- I visited with a
11 former official in the Department of Justice Civil
12 Rights Division. They indicated like how in Presidio
13 County it's 3800 square miles in the county and the
14 high number of language minorities in the county and
15 the real difficulty in that county in making it to a
16 location to get a driver's license. So -- or to get a
17 photo identification. So there will be a real problem
18 that way. So I think it clearly will cause
19 retrogression.

20 But secondly, the other point that I
21 wanted to make was that not just the Voting Rights Act
22 and the retrogression, it clearly will show a drop in
23 the vote -- in the African-American vote, but I think
24 that it could have been a lot more narrowly tailored.
25 It could have been focused specifically on the problem

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1 that's at hand, that's at issue, and it's not focused
2 on the problem at hand in the kind of narrow way that
3 I think that it should. So it unnecessarily tramples
4 upon rights of minorities that it doesn't need to.

5 SEN. ELLIS: I think I saw you in the
6 room when the testimony was given from the person from
7 AARP. And despite some of the questions that were
8 asked from present counsel, I assume that there will
9 be an attempt to maybe exempt the elderly out of this
10 bill in this great deliberative body. After being
11 here 24 hours, there might be an attempt to do that.

12 My question is if the legislature does
13 decide to exempt certain classes of voters, like maybe
14 seniors or some others from this in bill, would that
15 direct -- in your judgment, would that direct an even
16 greater amount of its potential to disenfranchise
17 voters of African-American and Hispanic ancestry?

18 MR. BLEDSOE: Well, I will say that -- I
19 don't know if I'll say it will be greater, but it
20 won't dilute it because the impact that would be
21 illegal or unconstitutional will be just the same
22 because the -- you'll be taking out one group, but
23 when you look at those who are younger than -- younger
24 than 65, you have an enormous problem with racial and
25 ethnic minorities.

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1 I think in one sense it makes it worse
2 in that the other group that might be -- one of the
3 other groups that might be unnecessarily adversely
4 impacted will no longer be adversely impacted. So it
5 will be primarily blacks and browns that will be
6 negatively impacted by the bill. So I don't think
7 that that would go far enough. There would still be a
8 deleterious impact on the African-American community.

9 SEN. ELLIS: Did you see the press
10 accounts from '05 and '06 of the Attorney General's
11 highly publicized campaign against voter fraud?

12 MR. BLEDSOE: I haven't actually seen
13 them. I've discussed some parts of them with
14 different individuals.

15 SEN. ELLIS: If you can, I just want to
16 get a sense of based on what you know about that
17 anti-voter fraud campaign, that the Attorney General
18 used materials that included images of sickle cell
19 stamps based on press accounts and photos of
20 African-Americans to illustrate signs of voter fraud.
21 And my question is, what does that tell you about the
22 state's attitude and enforcement of voter fraud? And
23 did the conduct and targets of those prosecutions fit
24 into a pattern of voter suppression in Texas?

25 MR. BLEDSOE: Well, I think it's very

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1 disappointing that that would be used because
2 obviously that makes a suggestion. Whether it was
3 intentional or not, one cannot know, but it's clear
4 that you send a certain signal when you use things
5 like that. And something so innocent as a sickle cell
6 stamp to be used there would be completely
7 inappropriate, and I don't understand how that could
8 be there. So obviously that would be offensive and
9 problematic.

10 And I do know that -- I think the data I
11 looked at in terms of the prosecutions were 18 out
12 of 19 or something along those lines were racial and
13 ethnic minorities, and that is one of the reasons why
14 we opposed the bill. When Representative Wolens had
15 put the bill together, you know, we were one of the
16 groups that vehemently opposed it because what we
17 feared at that time when he put that bill forth was
18 that it was going to be disparately used against
19 racial and ethnic minorities, and indeed I think that
20 was probably the case.

21 SEN. ELLIS: One last question. You may
22 have heard some of the testimony from Indiana and
23 Georgia from the experts of representatives that were
24 here. So what I want to ask you is you suggest the
25 photo ID law would suppress the African-American

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1 turnout, but some voter ID advocates claim that a
2 voter ID law does not suppress turnout and even claim
3 that turnout increased in Indiana and Georgia in '08
4 and that it was caused by voter ID laws compared to
5 the 2004 turnout when there was no voter ID law in
6 place in those states.

7 Obviously turnout can vary a lot between
8 the election cycles based on a lot of factors like
9 who is in the race, but my question is, did
10 African-American turnout in Texas increase in '08
11 without a voter ID law? And do you think the reason
12 might be the same as the real reason for reports of
13 higher turnout in Indiana and Georgia?

14 MR. BLEDSOE: Well, the African-American
15 turnout did increase greatly this past election in the
16 State of Texas, and obviously it wasn't due to a voter
17 ID law, and I think it increased greatly nationally,
18 including many states that did not have voter ID laws.
19 So I think it really would be completely inaccurate to
20 say that the voter ID laws had anything to do with an
21 increase.

22 I do know that they did cause folks to
23 be turned away from the polls in Georgia from my
24 communications with the Georgia State Conference. The
25 reason why you had the increased turnout was the Obama

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1 candidacy joined with an effective Obama campaign that
2 in many ways would be very hard to duplicate because
3 it wasn't just the Obama candidacy, but you had a
4 great deal of finances assisting the folks in getting
5 out votes in different communities.

6 So there was a real green element to
7 that turnout as well. So that went well beyond any
8 voter ID law. And I think that when the proof is in
9 ultimately there will be absolutely no question that
10 the voter ID law will have a negative impact on the
11 African-American vote in Georgia and I would presume
12 Indiana as well.

13 SEN. ELLIS: Mr. Bledsoe, thank you for
14 being so patient and being here.

15 To all Members present, thank you. And
16 with that, good morning. I'm signing off and good
17 night.

18 MR. BLEDSOE: Thank you, Senator.

19 SEN. DUNCAN: Thank you, Mr. Bledsoe.
20 The queue is clear. You're excused.

21 MR. BLEDSOE: Okay.

22 SEN. DUNCAN: We appreciate your
23 presence today.

24 **TESTIMONY BY ERIC NICHOLS**

25 SEN. DUNCAN: The next witness will be

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1 Eric Nichols with the Attorney General's Office.
2 Mr. Nichols, if you'll approach? Mr. Nichols is being
3 presented as a resource witness. If you'll state your
4 name and the office that you are with, please?

5 MR. NICHOLS: Thank you, Mr. Chairman.
6 Eric Nichols, Deputy Attorney General for Criminal
7 Justice with the Office of Attorney General.

8 SEN. DUNCAN: Mr. Nichols, you have ten
9 minutes, and then we'll open it up for questions.

10 MR. NICHOLS: Thank you, sir.
11 Regardless of the hour, I'm pleased to appear before
12 the Committee of the Whole, and I've had the
13 opportunity to speak with many of you individually as
14 well as Senate and House Committees on the topic that
15 I've been asked to be a resource on tonight, which is
16 the election code enforcement activity that has
17 occurred at the Office of the Attorney General.

18 By way of background, I've spent a good
19 deal of my legal career working in the legal justice
20 system, previously on the federal side as an Assistant
21 United States Attorney and now on behalf of the State
22 of Texas.

23 As part of my duties at the AG's office,
24 I oversee the agency's Criminal Justice Divisions,
25 including the two divisions of that office that are

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1 principally responsible for matters arising under the
2 Texas Election Code that come to our attention. Our
3 Criminal Investigations Division investigates election
4 code cases that are referred to our office. The
5 Criminal Prosecutions Division brings criminal
6 prosecutions and election code cases on behalf of the
7 state when an investigation reveals facts that warrant
8 prosecution.

9 Again, I understand from discussion
10 among the committee members earlier here today that
11 I'm here to be a resource on the issue of the election
12 code enforcement that's occurred through our agency,
13 and so I'm prepared to give you some historical data.
14 But before I do that, I want to provide three caveats
15 that I've provided to many of you before, and I
16 apologize to those of you who have heard these
17 caveats, but I think they are important to put the
18 data in context.

19 First, it's important for anyone looking
20 at data that comes out of our office to keep in mind
21 that our agency's election code enforcement efforts
22 are entirely referral driven. What does that mean?
23 We do not currently have nor have we ever had any
24 officers, investigators, prosecutors or any kind of
25 officers, agents or employees watch, supervise or

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1 otherwise monitor a polling place, voting station or
2 voter roster during any election in this state.

3 We, therefore, depend on third parties
4 to make us aware of alleged election code violations.
5 Accordingly, if a third party does not for whatever
6 reason detect a potential violation of the election
7 code or if they do detect a potential violation of the
8 election code but choose not to file a complaint or
9 make a referral to our office, then our office is
10 obviously unaware and unable to investigate what would
11 have been the underlying subject matter.

12 Referrals to our office on potential
13 election code cases come from three primary sources.
14 As you've heard, the Secretary of State is the state's
15 chief elections officer. Under the election code, the
16 Secretary of State takes questions and referrals from
17 a variety of sources, including members of the public.
18 The Secretary of State's Office reviews those matters,
19 and under the statute when they determine that there
20 is "reasonable cause to suspect that the alleged
21 criminal conduct occurred," the SOS then refers the
22 matter to our office for further investigation.

23 There are also provisions in the
24 election code that allow concerned local registered
25 voters to file complaints about alleged wrongdoing

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1 directly with our office by filing sworn affidavits.
2 And then finally the third, another primary referral
3 source for election code cases, are local elections
4 officials and local law enforcement.

5 Given our office's role in coordinating
6 on law enforcement generally with local law
7 enforcement agencies and officials, including local,
8 District and County Attorneys, Sheriffs and Police
9 Departments, we receive direct referrals from these
10 local officials.

11 The second point for context is this:
12 The legislature -- this legislature has given the
13 Attorney General's Office direct authority and
14 jurisdiction to prosecute election code cases, but our
15 authority and jurisdiction in this area is not
16 exclusive. Local prosecutors at the county level also
17 have jurisdiction to prosecute election code cases,
18 and they do, in fact, as you've heard in testimony
19 today, exercise that jurisdiction.

20 We do, in fact, coordinate with local
21 prosecutors. And as in the case of that Dallas County
22 case you heard about earlier, we do not generally move
23 forward on a case if a local prosecutor decides -- or
24 declines to prosecute.

25 A quick review of available new stories

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1 in addition to what you've heard today shows that from
2 Hidalgo County to Harris County there is local
3 election code enforcement going on by local
4 prosecutors. With all this in mind, to get a complete
5 picture of all of the prosecutions in Texas under the
6 election code would require you to collect data from
7 all 254 counties. So I can only give you a piece of
8 the statewide picture here tonight.

9 The last context point that I always
10 give, and I apologize again for those of you who have
11 heard it, is that for obvious reasons of law
12 enforcement and respecting the rights of those who may
13 be under active investigation or prosecution, I can
14 talk publicly in terms of numbers and largely general
15 fact scenarios rather than talk in a public hearing
16 about specific investigations or cases.

17 So with all that being said, I'd like to
18 provide you-all with historical data that dates from
19 August 2002 to present. In that time period, the
20 Office of Attorney General has received 192 referrals
21 of potential election code violations from the three
22 sources I mentioned previously. There have been some
23 statements made before the committee about the Office
24 of the Attorney General engaging in a lengthy
25 statewide investigation. Those comments are not quite

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1 accurate in terms of what our office does in terms of
2 reacting to referrals. We only act upon referrals
3 that we receive, and as you would expect having given
4 the office the authority and jurisdiction to
5 investigate these matters, our charge is to thoroughly
6 investigate the matters that come to our attention.

7 Those 192 referrals break down as
8 follows by source: 82 came from the Secretary of
9 State, 44 came from voters in the method I described
10 earlier, and 66 came from local officials and law
11 enforcement.

12 Furthermore, those 192 referrals break
13 down by the type of election as follows: 82 involved
14 Party Primary Elections, 33 involved General
15 Elections, and 77 involved other Local or Special
16 Elections. And so only about 15 percent of the
17 referrals to our office deal with issues arising in
18 General Elections, and 85 percent arise in either
19 Party Primary or Local Special Elections.

20 Now, of course, once these
21 investigations are conducted by our office, a
22 significant number of these cases are going to be
23 determined to not rise to the level of an election
24 code violation either based on the facts or law.
25 However, these 192 referrals have to date resulted in

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